(26,747)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 661.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, AND L. L. FERRALL, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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No. 3001

United States

Circuit Court of Appeals

For the Ninth Circuit.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the District of Arizona.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

In the United States District Court for the District of Arizona.

E. No. 10.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL,

Defendants.

Amended Complaint.

Comes now the United States of America and files this, its amended complaint, against the above-named defendants, answers under oath being hereby expressly waived, and for its cause of action plaintiff states:

I.

That this suit is prosecuted at the request of the Secretary of Agriculture and by direction of the Attorney General of the United States.

II.

That the said defendants are residents and citizens of the State of Arizona.

III.

That the plaintiff is the owner of certain lands in section twenty-three (23), township thirty-one (31) north of range two (2) east, Gila and Salt River base and meridian, in the county of Coconino, State of Arizona, the boundaries of said lands being more particularly described as follows, to wit; Beginning

at corner number one (1) from which the quarter-section corner between sections twenty-three (23) and twenty-four (24), township thirty-one (31) north, range two (2) east, Gila and Salt River base and meridian bears north 59° 47′ east, 780.4 feet distant, thence north 82° 24 west, 1500 feet to corner number two (2), thence north 20° 02′ east, [1*] 600 feet to corner number three (3), thence south 82° 24′ east 1500 to corner number four (4), thence south 20° 02′ west 600 feet to corner number one (1), the place of beginning; and said lands being the same as those included within the so-called "Cape Horn Lode Mining Claim," location notice of which is of record in the office of the county recorder of Coconino County, in Book 4 of Mines, page 106, and amended location notice in Book 5 of Mines, page 363, and as the same is described in the patent survey thereof, numbered 2023, and filed in the office of the United States Surveyor General for Arizona.

That on February 20, 1893, said lands with other lands, were withdrawn and set apart as the Grand Canyon Forest Reserve by the proclamation of the President of the United States, issued pursuant to the Act of Congress approved March 3, 1891 (26 Stat. 1095); and said lands have been at all times since said date part and parcel of a National Forest of the United States, and are now a part and parcel of the Tusayan National Forest established by proclamation of the President of the United States, dated June 28, 1910, issued pursuant to the

*Page-number appearing at foot of page of original certified Transcript of Record.

aforesaid Act of March 3, 1891, and the Act of Congress approved June 4, 1897 (30 Stat. 11). That the aforesaid lands of the plaintiff, with the exception of a strip about 75 feet in width along the southern boundary thereof, were, with other land, on January 11, 1908, further withdrawn and set apart by proclamation of the President of the United States, issued pursuant to the Act of Congress approved June 8, 1906 (34 Stat. 225), as the Grand Canyon National Monument for the protection of the Grand Canyon of the Colorado River; and the aforesaid lands of the plaintiff have been at all times since January 11, 1908, and are now, a part and parcel of the said Grand Canyon National Monument. That the Grand Canyon of the Colorado River is an object of great scientific and scenic interest, and is visited by many thousands of persons each year; and the aforesaid lands of the plaintiff, by reason of their location upon and along the southern rim of said Grand Canyon, and immediately west of and adjacent to the railroad [2] terminal and the principal hotel buildings, and by reason of the fact they enclose the head of Bright Angel Trail, the principal means of access by the public to the bottom of said Grand Canyon, constitute a very important part of the Grand Canyon National Monument withdrawn and set apart as aforesaid, and of right should be open to the free and unobstructed access at all times by the public, and to the unhampered administration by the officers and agents of the plaintiff for the protection and accommodation of the large numbers of persons

desirous of viewing the great scenic and scientific wonders of the Grand Canyon of the Colorado River.

IV.

That on April 10, 1902, the defendant, Ralph H. Cameron, in pretended compliance with the mining laws of the United States, located the aforesaid lands of the plaintiff as the Cape Horn Lode Mining Claim, and on February 23, 1904, he made an amended location of said pretended Cape Horn Lode Mining Claim. That on May 17, 1905, the said defendant filed with the Register and Receiver of the United States Land Office, then at Prescott, Arizona, his application under the mining laws of the United States for patent on the said alleged Cape Horn Lode Mining Claim, embracing the aforesaid lands of the plaintiff; that thereafter a protest was made against said application for patent on said alleged Cape Horn Lode Mining Claim, and after due and proper notice to said defendant a hearing was had at which said defendant appeared and introduced evidence in support of the said alleged Cape Horn Lode Mining Claim and in support of his application for patent thereon; that thereafter on February 11, 1909, the Secretary of the Interior after full consideration of the evidence taken at the aforesaid hearing held that no discovery of mineral had been made within the boundaries of said alleged Cape Horn Lode Mining Claim; and that the land embraced in said alleged Cape Horn Lode Mining Claim, being the aforesaid land of the plaintiff, was not mineral in character, and the said Secre-

tary of the Interior rejected the aforesaid application [3] for patent and held the location of the said Cape Horn Lode Mining Claim to be null and void, and the said Secretary of the Interior held the land embraced in said pretended Cape Horn Lode Mining Claim, being the aforesaid lands of the plaintiff, to be a part and parcel of the aforesaid Grand Canyon National Monument.

That thereafter, on November 29, 1911, the First Assistant Secretary of the Interior denied a motion for review of the aforesaid decision of the Department of the Interior dated February 11, 1909, and thereafter on April 3, 1912, the General Land Office declared the aforesaid decision of the Secretary of the Interior, dated February 11, 1909, to be final and finally annulled the location of the said Cape Horn Lode Mining Claim and declared the land covered thereby being the aforesaid land of the plaintiff, to be a part of the aforesaid Grand Canyon National Monument.

That thereafter on July 28, 1914, the said defendant, notwithstanding the aforesaid proceedings before the Department of the Interior and the final decision of the said Department holding the location of the said Cape Horn Lode Mining Claim to be null and void, and in an attempt to reopen the matters and questions theretofore finally determined in said proceedings before the Interior Department, filed with the Register and Receiver of the United States Land Office at Phoenix, Arizona, a second application under the mining laws of the United

States for patent on the said Cape Horn Lode Mining Claim, and thereafter on August 4, 1915, the Secretary of the Interior held that by reason of the previous decisions of the Interior Department, as aforesaid, the said Cape Horn Lode Mining Claim had no legal existence, and the said Secretary finally denied said second application for patent thereon.

V.

That said defendant, Ralph H. Cameron, notwithstanding the aforesaid proceedings in the Department of the Interior involving the alleged Cape Horn Lode Mining Claim, and the said decisions of said [4] Department declaring the location of said mining claim to be null and void, has continued to assert, and is now asserting the right to the exclusive use and occupancy of the aforesaid lands of the plaintiff within the Grand Canyon National Monument and Tusayan National Forest, thereby preventing the plaintiff, its officers and agents, from constructing on the said lands improvements such as walks, rails, seats, etc., which are greatly needed for the convenience and protection of the large numbers of the public desirous of viewing the great scenic and scientifive wonders of the Grand Canyon of the Colorado River; and by reason of said asserted right of exclusive use and possession of said lands by said defendant, and by reason of suits instituted and threats made, and violence offered, by said defendant, and others of the defendants, persons holding or desirous of securing permits from the plaintiff to occupy and use, in conformity with

the rules and regulations governing such use and occupancy, portions of the aforesaid lands of the plaintiff for the purpose of conducting thereon enterprises for the convenience of the public, have been prevented from going on or occupying said lands, and were forcibly ejected therefrom and deterred from securing permits as aforesaid.

That said defendants have heretofore constructed on said lands of the plaintiff and on and near the south rim of the Grand Canyon of the Colorado River, numerous buildings, all of which buildings are within the aforesaid Tusayan National Forest and with the exception of two buildings occupied by the defendant, B. A. Cameron, all are within the Grand Canyon National Monument; that all of said buildings have been constructed as aforesaid since the withdrawal of said land as a part of the Grand Canyon Forest Reserve as aforesaid; that some of said buildings have been enlarged, and new and additional buildings have been erected on said lands of the plaintiff by defendants B. A. Cameron, L. L. Ferrall and S. D. Pepin in the years 1914 and 1915, subsequent to and notwithstanding the aforesaid decisions of the Department of the Interior dated February 11, 1909, and November 29, 1911; [5] that notwithstanding the aforesaid proceedings in and decisions by the Department of the Interior holding said alleged Cape Horn Lode Mining Claim to be null and void, the said defendants have maintained, and are now maintaining, the said buildings on the aforesaid lands of the plaintiff within the

Tusayan National Forest and the Grand Canyon National Monument as aforesaid, and said defendants have occupied and are now occupying said buildings as residences and for the purpose of conducting therein and on the aforesaid lands of the plaintiff, livery and other business enterprises. That the use of said lands of the plaintiff and of the aforesaid buildings by the defendants for the conduct of livery businesses was first begun on a small scale in the year 1914; and such livery businesses were greatly increased in the summer of 1915 and said businesses are now being conducted on an extensive scale. That said defendants have permitted to accumulate around the buildings erected and maintained by them as aforesaid and on the aforesaid lands of the plaintiff and on and near the rim of the Grand Canyon of the Colorado River, large deposits of stable manure, garbage and other refuse, to the great annoyance and discomfort of the public visiting the Grand Canyon, and thereby greatly detracting from the scenic beauties of said Grand Canyon.

That on September 19, 1913, the said Ralph H. Cameron was, under the authority vested in the Secretary of Agriculture by the Act of June 4, 1897 (30 Stat. 11), formally offered a free special use permit authorizing the occupancy of that part of said lands of the plaintiff on which the aforesaid buildings are located, subject to the rules and regulations prescribed by the Secretary of Agriculture for the occupancy of National Forests; that on Dec. 4,

1913, the said Ralph H. Cameron by and through his attorneys, Stoneman & Ling of Phoenix, Arizona, in a letter addressed to the District Forester at Albuquerque, New Mexico, declined to accept said permit, and stated that said permit was issued without his consent and against his wishes, and that he, the said Cameron, did not recognize the necessity for such permit; and that on [6] August 3, 1915, said permit was formally revoked by the Acting Forester because of said refusal to accept said permit and abide by the conditions thereof.

That said Ralph H. Cameron, pretending to do the annual assessment work on the said Cape Horn Lode Mining Claim, as required by the mining laws of the United States, has excavated cuts, tunnels and shafts on and in the aforesaid lands of the plaintiff and within the Grand Canyon of the Colorado River, and the aforesaid Grand Canyon National Monument, and said defendant gives out and threatens that he intends to, and plaintiff alleges that he will, continue said excavating and pretended mining operation, in violence of the laws and regulations governing national monuments, and thereby irreparably damaging that part of the rim of the Grand Canyon of the Colorado River and of the Grand Canyon National Monument, most accessible to and most frequented by the public.

That all the aforesaid acts and doings of the defendants, their agents, servants, and employees, have been and are being done against the wishes and without the consent of the plaintiff, its officers and agents,

and in violation of the rules and regulations prescribed for the management and control of national forests and national monuments, and in violation of law, and in utter disregard of the rights and duties of the plaintiff; and said defendants, by their acts and doings, as aforesaid, have appropriated to their private use the aforesaid lands of the plaintiff which have, as aforesaid, been set aside as and constitute a very important part of the Grand Canyon National Monument established for the protection of the Grand Canyon of the Colorado River, and which said lands of the plaintiff, by right, should be open to the free and unobstructed access by the public, and to the unhampered administration by the proper officers of the plaintiff at all times, and which said acts and doings of the defendants amount to a continuing trespass, a purpresture and a public nuisance.

That during the summer of 1915, there has been a large increase [7] in the number of persons visiting the Grand Canyon, and in order to afford adequate conveniences to this large number of persons, it has been, and still is, necessary for the plaintiff to issue and keep in effect a large number of permits authorizing the conduct of livery businesses within the said Grand Canyon National Monument, and to put into effect a closer supervision over and regulation of the livery and other businesses conducted within said Grand Canyon National Monument; and over and of said National Monument; and the acts and doings of the defendants as aforesaid,

and their interference with the proper administration of the said lands of the plaintiff as aforesaid, have greatly hampered, and are now greatly hampering the plaintiff in said additional supervision and regulation necessary because of the large number of persons visiting the Grand Canyon as aforesaid.

Forasmuch, therefore, as the plaintiff is without plain, adequate, and speedy remedy at law, it prays that a temporary injunction issue, restraining the defendants, their agents, servants and employees, from occupying, using, or asserting any claim or right to the occupancy, use, or possession of the aforesaid lands of the plaintiff, and the said Cape Horn Lode Mining Claim, and from interfering in any manner whatsoever with the administration and use of said lands by the plaintiff, its officers and agents, or with the permittees of the plaintiff, or the public, and from making further excavations in or on said lands of the plaintiff; and that on final hearing (answer under oath being hereby waived) the said temporary injunction be made permanent, and that at that time the defendants be further ordered to remove from the aforesaid lands of the plaintiff, all buildings or structures, and all deposits of filth or refuse, and to place said lands as nearly as possible in their natural condition; that it recover of and from the defendants, its costs, and for such other and

further relief as equity may require, and to this Court may seem meet.

THOMAS A. FLYNN,
United States Attorney for the District of Arizona.

J. O. SETH,
Assistant to the Solicitor for the Dept. of Agriculture.

GERALD JONES,
Assistant United States Attorney. [8]

United States of America,
District of Arizona,—ss.

L. A. Way, being first duly sworn, deposes and says: That he is a Forest Ranger employed in the United States of America, and as such makes this affidavit for and on behalf of the United States of America; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein alleged on information and belief and as to those, he believes the same to be true.

L. C. WAY.

Subscribed and sworn to before me this 30 day of September, A. D. 1915.

[Notarial Seal] F. M. GOLD,
Notary Public.

My com. ex. 3/9, 1918. [9]

[Endorsements]: Prescott—E. 10. In the United States District Court for the District of Arizona. United States of America, Plaintiff, vs. Ralph H. Cameron et al., Defendants. Amended Bill of Com-

plaint. Filed Oct. 1, 1915, at —— M. George W. Lewis, Clerk. By R. E. L. Webb, Deputy. [10]

In the United States District Court for the District of Arizona.

E. No. 10—PRESCOTT.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL,

Defendants.

Answer to Amended Complaint.

Come now the above-named defendants, and, not in any manner waiving the motion to dismiss heretofore filed herein or the motion to transfer this case to the law side of the above-entitled court, heretofore filed herein, or any right under either or both of said motions and especially excepting to and protesting against the action of the above-entitled court in overruling both of said motions, for answer to amended complaint herein, respectfully show to the Court:

I.

Defendants admit the allegations of paragraphs I and II of said amended complaint.

II.

Defendants deny that plaintiff is the owner of the lands described in paragraph III of said amended complaint as being within the boundaries of the "so-

called Cape Horn Lode Mining Claim," but allege the fact that the defendant Ralph H. Cameron, on the 10th day of April, 1902, became the owner thereof, and ever since that date has been and is now the owner thereof, in the possession of the same and is entitled to the possession of the same; defendants admit that said lands were withdrawn or set apart as a portion of the Grand Canyon Forest Reserve, but allege the fact to be that on the 10th day of April, 1902, the said Ralph H. Cameron located the Cape Horn Lode Mining Claim and ever since said date the said lands were and are now the property of and belong to the defendant, Ralph H. Cameron, as will hereinafter more fully appear; [11] deny that said lands are a part or parcel of the Tusayan National Forest, or any National Forest, as the same were the property of and belonged to the said defendant, Ralph H. Cameron, long prior to and at the date of the establishment of the said Tusayan National Forest and ever since have been and are now the property of the said last-named defendant, as will hereinafter more fully appear; deny that said lands or any thereof were ever further or at all withdrawn and set apart by reason of the pretended establishment of the Grand Canyon National Monument for the reason that all of the said lands were the property of and belonged to the defendant, Ralph H. Cameron, long prior to and at the date of the establishment of the said Grand Canyon National Monument and ever since have been and now are the property of and belong to the said last-named

defendant. Admit that the said canyon is an object of scenic interest and is visited by many people, but deny that it is of any scientific interest whatsoever, in the sense intended in the said Act of Congress of June 8, 1906, and allege the fact to be that the said proclamation of the President, dated January 11, 1908, pretending to withdraw certain lands from the public domain and to establish the Grand Canyon National Monument was issued and promulgated wholly and entirely without authority of law, as said canyon is not an historic landmark, nor an historic or prehistoric structure nor an object of historic or scientific interest nor an antiquity in the sense intended and contemplated by Congress in the meaning of the said Act of Congress of June 8, 1906, but on the contrary is merely an enormous canyon, over two hundred miles in length, from eleven to fourteen miles in width and approximately one mile in depth. That said pretended National Monument is approximately sixty miles long and thirty miles in width and is entirely unnecessary for the proper care and management of the Grand Canyon, even if said pretended establishment of said monument were lawful and that the limits of the said pretended monument are not confined to the smallest area compatible with the proper care and management of the canyon. That therefore, the pretended withdrawal of said lands as within [12] a national monument is wholly ineffective and void and does not and never did, in any way, affect the lands described and in question herein; admit that the said lands are situ-

ated as described in the latter part of paragraph III of said amended complaint; deny that they are any part of the Grand Canyon National Monument, so called or at all; deny that said lands or any of them should be free and unobstructed to access by the public and to the unhampered administration of the officers and agents of the plaintiff for any purpose, for the reason that said lands and all of them belong to and are the property of the defendant, Ralph H. Cameron, on which the general public or the officers and agents of plaintiff have no right whatsoever to enter, except by the permission of the defendant, Ralph H. Cameron; but defendants allege the fact to be that the said Ralph H. Cameron has always, at all times, free and without inconvenience, charge or obstruction of any kind permitted all persons desiring to observe the said Grand Canyon to come upon said lands and all thereof without let or hindrance of any kind on his part.

III.

Admit that the said Ralph H. Cameron, on April 10, 1902, located the said lands, under mining laws of the plaintiff, and on February 23, 1904, made an amended location thereof, such location being and constituting the Cape Horn Lode Mining Claim and allege that the said location was a good, valid, and lawful location, on said April 10, 1902, said Cameron having, at that time, fully complied with all of the lawful requirements relating to the valid location of mining claims of that character, and that said Cameron, ever since said April 10, 1902, has done lawful

and sufficient assessment work on the said mining claim, of the value of one hundred dollars and more each year, from said last mentioned date down to and including the year 1915; that during each of said years, in doing the said assessment work, the said Cameron made good and sufficient discoveries of mineral bearing rock and lodes in place, any of which said discoveries were and are sufficient [13] to sustain the said location from the date of such discoveries. Admit that the said Ralph H. Cameron filed his application for patent, as alleged in paragraph IV; admit that a protest was made against said application for patent, as alleged; admit that a hearing was had at which the said defendant, Ralph H. Cameron, appeared, and admit that said last-named defendant introduced evidence to sustain his application for patent, but deny that said last-named defendant ever introduced any evidence whatever to sustain his location or mining claim, as the sole matter at issue was whether or not the Land Department would grant his application for patent or deny such application; admit that the Secretary of the Interior made a pretended and unauthorized holding that the "land was not mineral in character," which holding defendants are informed and believe was wholly immaterial to the matter at issue; admit that the said Secretary rejected the said application for patent and admit that the said Secretary attempted to hold said mining claim null and void and also attempted to hold that the said lands were a part and parcel of the said Grand Canyon

National Monument; but the defendants, on their information, advice, and belief, assert that the attempted holding of the said Secretary to the effect that the said mining claim was null and void was, itself, void, null, and of no effect, as was the attempted holding that the lands were a part and parcel of the said National Monument, as the said Secretary had no power, authority, jurisdiction, or right whatsoever to hold said claim null and void, nor had the Department of the Interior or any of its officers or bureaus any such power, authority, jurisdiction, or right, as the said Secretary and Department did not possess nor do they now possess any function to cancel or hold null and void any mining claim or location, the question of whether it is a valid mining claim being a judicial one and not determinable by said Department or Secretary and for the further reason that the validity of the said mining claim or location was not before the said Department nor the said Secretary, as the sole question presented by the application for patent, or otherwise, was whether a patent should [14] or should not issue and for the further reason that neither said Secretary nor Department of the Interior has any right, power, authority, or jurisdiction whatever, in any event or under any circumstances to determine or adjudicate whether or not a mining claim or location is valid, as such question is a judicial one of and concerning title, which can only, lawfully and in any binding manner be raised, litigated, and determined in a court of law, before a lawful jury, if

such jury be properly and seasonably demanded by either party; that such pretended holding and ruling by the said Secretary was an attempt to take the property of said defendant, Ralph H. Cameron, to wit, his mining location, and his possessory title thereto, from him without due or any process of law whatsoever and was also an attempt to deprive the said last-named defendant of his constitutional right to a trial by jury of the question of whether he had title to the said land and lodes within his said location or not; for the further reason that the secretary attempts to base his pretending holding that said claim is null and void upon a finding of fact that the "land is nonmineral in character," which finding is not, in any event, a valid ground or reason for holding a mining claim or location void; for the further reason that the evidence then before said Secretary and quoted liberally in this opinion when making such pretended holding and ruling, shows, without contradiction, that discovery of mineral-bearing rock and lode in place had been made within the boundaries of said claim, long prior to the said application for patent being filed and prior to the location of said claim, sufficient to sustain the said location, even if not sufficient, in the view of the Secretary, to justify the issuance of patent and it was entirely immaterial whether or not the land was nonmineral in character, as it is mineral deposits only which may be located under the lode mining laws and the land or ground surrounding the deposit is merely given to the locator to enable him to work

and develop his mineral deposit; for the further reason that the Secretary did not find, as a fact, any valid, lawful reason whatsoever upon which he could lawfully, [15] even if vested with full power so to do, hold a mining claim or location null and void and defendants allege the fact to be, as they are informed, advised and believe, that the finding of rock in place containing mineral, whether the said rock is rich or poor or whether it assays high or low, is a sufficient discovery to sustain any mining claim and location and that the amended complaint does not allege that the Secretary made any finding whatsoever that such a discovery was not made upon the claim in question, at or prior to its location or at any time prior to the date of the said Secretary's pretended ruling or at all; that as will hereinafter more fully appear, the said last-named defendant, at the time of the location of the said mining claim made ample and sufficient discovery of mineral-bearing rock in place, within the boundaries of said claim and made numerous discoveries of like character subsequent to the location of said claim, any one of which said discoveries were, as defendants are informed and believe, sufficient in the law to validate said claim, from the date of such discovery, even had no discovery been theretofore made; admit the allegations of the second subdivision of paragraph IV of said amended complaint, but allege that the said Secretary had no authority, power, right, or jurisdiction to take the action therein alleged and especially asserting that said Secretary's actions, as therein alleged, were wholly null and void. Ad-

mit the allegations of the third subdivision of paragraph IV of said amended complaint, but allege the fact to be that on the said second application for patent the said Secretary had no additional power, authority, jurisdiction or right than he had upon the first application for patent that the question of the validity of the location was not before him nor was it ever, in any way whatsoever, whether by waiver or otherwise, submitted to the said Secretary or Department by the defendant last named or at all and the pretended ruling, on the rejection of the second application for patent, was null and void and of no effect, for the reasons hereinbefore set forth at length and which are not reiterated, solely to avoid repetition but, which are, nevertheless, [16] strongly asserted.

IV.

Admit that the defendant, Ralph H. Cameron, notwithstanding said void, wrongful and oppressive pretended rulings and proceedings, has continued, at all times, to assert and does now assert that he has the right to the exclusive use and occupancy of the said lands, but allege the fact to be that the said defendant last named has such right, as he is the sole owner of the land in question; denies that the assertion of such right prevents the plaintiff, its officers and agents from construction on said lands improvements, although said last-named defendant has the perfect right to prevent them from so doing upon his property; alleges the fact to be that neither the plaintiff nor any of its said officers and agents

have ever in any way attempted to place any improvements, such as mentioned in amended complaint, upon said ground and further alleges the fact to be that such improvements would be wholly unnecessary, as the defendant last named has long since placed all of the improvements named in the amended complaint, on the said ground where they, at all times, have been and now are freely used, without let, obstruction or hindrance whatsoever, by the public desiring to view the said Grand Canyon, at that point; deny that the defendants or any of them have ever, by threats or violence of any kind, prevented anyone whomsoever from going upon said lands or occupying the same; deny that the defendants, or any of them, have ever forcibly ejected anyone whomsoever from the said grounds or deterred them from securing permits from the plaintiff, which permits defendants assert, however, would be and are wholly void and of no effect, as the said defendant, Ralph H. Cameron, is the sole owner of the said ground; admit that the said last-named defendant did institute, in the State Court of Coconino County, Arizona an injunction proceeding to restrain a certain pretended permittee of plaintiff from trespassing or going upon the ground in question and that he is still maintaining and prosecuting such action but defendants are informed advised and believe that [17] said Ralph H. Cameron has a perfect right to resort to the courts to protect his property interests and title. Admit the allegations contained in the first seven lines of the second sub-

division of paragraph V but deny that all of the buildings therein mentioned have been constructed since the withdrawal of said land as a part of the Grand Canyon Forest Reserve as aforesaid; and deny that some of said buildings have been enlarged or that new or additional buildings have been erected on land of the plaintiff by defendants B. A. Cameron, L. L. Ferrall, and S. D. Pepin, in the years 1914 and 1915, except one building erected thereon by said Pepin, subsequent to and notwithstanding the aforesaid decisions of the Department of the Interior, dated February 11, 1909, and November 29, 1911; and deny that any of said buildings are upon lands of the plaintiff, but allege the fact to be that they are upon lands belonging to the defendant, Ralph H. Cameron, as aforesaid; admit that defendants have occupied and are now occupying said buildings, but deny that the use of any lands of the plaintiff or of the aforesaid buildings by the defendants for the conduct of livery business was first begun on a small scale in the year 1914, or that such livery businesses were greatly increased in the summer of 1915, and are now being conducted on an extensive scale; deny the allegations contained in the last sentence of the second subdivision of paragraph V of said amended complaint and allege the fact to be that the premises are always kept and maintained in a clean and sanitary manner and condition and it is here prayed that the "Showing resisting application for temporary injunction" heretofore filed in this case on which the Court denied the application for temporary injunction of the plaintiff, be made

a part of this answer and read herewith and herein as fully and with the same effect as if set forth in this answer, *in extenso;* admit that the said Ralph H. Cameron, defendant, has excavated cuts, tunnels and shafts, as alleged, but not upon the lands of the plaintiff, such excavations having been made in the doing of the annual assessment and other mining development work upon the said [18] Cape Horn Mining Claim and that, while said last-named defendant has never "given out or threatened" that he will continue such work, he intends so to do, as he is informed, advised and believes he has a right to do and must do to maintain his mining claim and location, but denies that such work in any way damages the rim of the said Grand Canyon. Denies that his said work or any of the actions on his part of which the plaintiff complains, are in violation of any rules or regulations whatsoever of the plaintiff, as such rules and regulations cannot and do not apply to the lands in question so owned and belonging to the said defendant, Ralph H. Cameron; deny that the defendants or any of them have performed or done any acts whatsoever amounting to a trespass, purpresture or public nuisance; that it is clearly impossible that any acts of the defendants, upon said lands could, in any event, constitute a trespass or purpresture, as even the plaintiff asserts in its amended complaint that it is not in possession of said lands, and defendants assert that the defendant, Ralph H. Cameron, at all times since the location of said mining claim, has been in the actual,

physical possession of the said lands and all thereof, under title, claim or title, color of title and claim of right; that the defendants herein, other than the said Ralph H. Cameron, claim no right, title or interest whatsoever in said lands and pray that this action be dismissed as against them; said Ralph H. Cameron admits that the plaintiff has offered him permit to occupy said lands and admits that he has refused the same but asserts that it would have been an idle and dangerous action for him to have accepted any such permit as he recognizes no right whatsoever of the plaintiff to issue any such permit. Denies that during the summer of 1915 there has been a large increase in the number of persons visiting the Grand Canyon and deny that in order to afford adequate conveniences to this large number of persons, it has been, and still is, necessary for the plaintiff to issue and keep in effect a large number of permits authorizing the conduct of livery businesses within the said Grand Canyon National Monument or to [19] put into effect a closer supervision over, or regulation of the livery and other businesses conducted within said Grand Canyon National Monument, or over and of said National Monument, and deny that the acts and doings of defendants as alleged in said amended complaint, or at all, have greatly hampered or are now greatly hampering the plaintiff in said additional supervision and regulation, alleged in said amended complaint to be necessary because of the large number of persons visiting the Grand Canyon, and deny that said defendants have in any manner interfered with

the proper administration of any land of the plaintiff.

And defendants deny each and every, all and singular, the allegations of said amended complaint herein, except as specifically herein admitted.

WHEREFORE, defendants having fully answered, pray that the said amended complaint be dismissed, that the plaintiff take nothing thereby and that said defendants go hence without day, discharged from further answering herein.

J. E. MORRISON,
ROBT. E. MORRISON,
Attorneys for Defendants.

And for a further, other, and separate defense, the defendant, Ralph H. Cameron, alleges and shows to the Court:

I.

That he is now and at all the times hereinafter mentioned was a citizen of the United States of America, over the age of twenty-one years, and that he resides in the City of Phoenix, in the County of Maricopa, State of Arizona.

II.

That this defendant is now, and at all the times herein stated, and ever since the 10th day of April, 1902, has been the owner of and in exclusive possession of the following described mining claim, situate in an unorganized mining district in the County of Coconino, in the former territory and present State of Arizona, known as Francis Mining District, to wit: Cape Horn Lode Mining Claim, notice of location [20] whereof is of record in the office of the

County Recorder of said Coconino County in Book 4 of Mines, page 106, and amended notice of location whereof is of record in said County Recorder's office in Book 5 of Mines, page 363, reference to which said location notices is hereby made for a more particular description of said mining claims.

That on the date of the location of said mining claims, to wit, on the 10th day of April, 1902, the ground included within the boundaries thereof was mineral land of the public domain of the United States, vacant and unoccupied, and was not owned, held, or claimed by any person or persons as mining ground or otherwise, and that while the same was so vacant and unclaimed, the locator of said mining claim, this defendant, entered thereon and then and there discovered mineral in place; and after said discovery a location monument of stones about three feet at the base, in which said location monument, said locator placed a notice of location of said mining claim, in which was contained; the name of the claim, Cape Horn Mining Claim; the name of the locator, Ralph H. Cameron; the date of the location, April 10, 1902; the length and width of the claim in feet, 1500 by 600 feet; the distance in feet from the point of discovery to each end of the claim, 1500 feet easterly from the discovery shaft; the general course of the claim, from the west to the east; the locality of the claim with reference to some natural object or permanent monument whereby the claim could be identified, about 3 and 7/10 miles in southerly direction from Indian Gar-

den Springs on the South rim of the Grand Canyon at and near the head of Bright Angel Toll Road or Trail and joins Golden Eagle mining claim on the east end; and thereafter within ninety days from the date of said location said locator caused a copy of said location notice to be recorded in the office of said County Recorder, in Book 4 of Mines, page 106, as above set forth; and said locator within said ninety days sunk a discovery shaft in and upon said mining [21] claim to a depth of ten feet from the lower part of the rim of said shaft at the surface, and disclosed mineral in place therein; and within said ninety days said locator monumented said claim upon the ground so that the boundaries thereof could be readily traced by erecting a monument of stones at each corner of said claim, and a like monument at the center of each side line, and at the center of each end line, of said claim.

III.

That this defendant is now seized and possessed of said mining claim, and has occupied and mined thereon from the date of said location to the present time, and during each and every year since the date of said location to the present year performed work and labor thereon to the amount of at least one hundred dollars per year as required by the laws of the United States.

IV.

That this defendant is credibly *informed believes* that the plaintiff *make* some claim adverse to the title of this defendant in and to said mining claim.

WHEREFORE, this defendant prays that he be adjudged the owner and entitled to the possession of the said Cape Horn Lode Mining Claim and the whole thereof, and that the plaintiff has no right, title, or interest in and to the same, or in any part thereof, and that plaintiff be debarred and forever estopped from having or claiming any right, title, or interest in and to said mining claim, or any part thereto adverse to this defendant, and for such other and further relief as to the Court may seem meet.

J. E. MORRISON,
ROBT. E. MORRISON,
Attorneys for Defendant, Ralph H. Cameron. [22]

[Endorsements]: U. S. District Court, Arizona. E. No. 10—Prescott. United States of America, Plaintiff, v. Ralph H. Cameron et al., Defendants. Answer to Amended Complaint. Service accepted July 28th, 1916. Thomas A. Flynn, U. S. Attorney. J. E. Morrison, Robt. E. Morrison, Attorneys for Defendant, Ralph H Cameron. Filed July 28, 1916. Mose Drachman, Clerk. By R. E. L. Webb, Deputy. [23]

In the United States District Court for the District of Arizona.

E. 10—(PRESCOTT).

UNITED STATES OF AMERICA

vs.

RALPH H. CAMERON et al.

Motion to Dismiss Amended Bill of Complaint, etc.

COME NOW the defendants in the above-entitled action and move the Court that it dismiss the amended bill of complaint herein for the reason that the allegations therein contained do not constitute any ground for any equitable relief whatsoever.

And for the further reason that it is apparent from the face of the bill that the matter attempted to be litigated is the right of possession of the ground in question and described in the complaint and the recovery of such possession by the plaintiff which matters may only be litigated in an action at law.

ROBT. E. MORRISON,
J. E. MORRISON,
Solicitors for Defendants.

And the defendants respectfully represent that the allegations of said amended bill of complaint show that this suit, although commenced in equity, should have been brought, if at all, as an action at law, on the law side of the Court and defendants respectfully move the Court, should it fail to grant their motion

to dismiss, that it forthwith transfer this suit to the law side of the Court.

ROBT. E. MORRISON,
J. E. MORRISON,
Solicitors for Defendants. [24]

[Endorsements]: E. 10—(Prescott). United States District Court, Arizona. United States of America vs. Ralph H. Cameron et al. Motion to Dismiss or Transfer. Service Acknowledged Oct. 2/15. Gerald Jones, Asst. U. S. Atty. Filed Oct. 2, 1915, at —— M. George W. Lewis, Clerk. By R. E. L. Webb, Deputy. [25]

In the United States District Court for the District of Arizona.

Honorable WILLIAM H. SAWTELLE, District Judge.

E. 10.

UNITED STATES OF AMERICA

vs.

R. H. CAMERON et al.,

Defendants.

Minute Entry Appearing Under Date of October 12th, 1915.

The argument on the defendants' motion to dismiss the plaintiff's bill or to transfer the cause to the law side of the Court Calendar is this day resumed pursuant to an order of adjournment made on yesterday and completed and the motion submitted to

the Court for its decision thereon, and the same is taken under advisement by the Court. [26]

In the United States District Court for the District of Arizona.

Honorable WILLIAM H. SAWTELLE, District Judge.

E. 10.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH H. CAMERON et al.,

Defendants.

Minute Entry Appearing Under Date of March 25th, 1916.

The defendants' motion to dismiss on file herein having been argued and submitted to the Court and taken under advisement at a former day of this Court, the Court having maturely considered the same,—

IT IS ORDERED that the said motion be and the same is hereby overruled, to which ruling and action of the Court the defendants except. [27]

In the United States District Court for the District of Arizona.

Honorable WILLIAM H. SAWTELLE, District Judge.

E. 10.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH H. CAMERON et al.,

Defendants.

Minute Entry Appearing Under Date of March 25th, 1916.

The motion of the defendants that this case be transferred to the law side of the calendar having been argued by counsel, submitted, and taken under advisement by the Court at a former day of this Court, and the Court having maturely considered the same,—

IT IS NOW ORDERED that the same motion be and the same is hereby overruled, to which ruling and action of the Court, the defendants except.

[28]

In the United States District Court for the District of Arizona.

E. No. 10—PRESCOTT.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERALL,

Defendants.

Election That Motion to Dismiss Filed to the Original Bill of Complaint Herein Shall Stand to the Amended Complaint.

To the Above-named Plaintiff, and Its Attorneys of Record:

You will please take notice that the above-named defendants elect to have their motion to dismiss or demurrer filed to the original bill of complaint herein stand as their motion to dismiss or demurrer to the amended complaint herein.

J. E. MORRISON,
ROBT. E. MORRISON,
Attorneys for Defendants.

[Endorsements]: U. S. District Court, Arizona. E. No. 10—Prescott. United States of America, Plaintiff, v. Ralph H. Cameron et al., Defendants. Election that Motion to Dismiss Filed to the Original Bill of Complaint Herein Shall Stand to the Amended Complaint. Service Accepted July 28, 1916. Thomas

A. Flynn, U. S. Atty. J. E. Morrison, Robt. E. Morrison, Attorneys for Defendants. Filed July 28, 1916. Mose Drachman, Clerk. By R. E. L. Webb, Deputy. [29]

In the United States District Court for the District of Arizona.

Honorable WILLIAM H. SAWTELLE, District Judge.

E. 10.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH H. CAMERON et al.,

Defendants.

Minute Entry Appearing Under Date of August 4th, 1916.

Hearing on above-entitled cause came on regularly this day, T. A. Flynn, U. S. Attorney, S. L. Pattee, Asst. U. S. Attorney, J. H. Langston, Asst. U. S. Attorney, and J. O. Seth, Assistant Solicitor to the Department of Agriculture, appearing upon behalf of the United States of America, and Robert E. Morrison, Esquire, appearing upon behalf of the defendants, and both sides announce themselves ready to proceed with the hearing of the case.

T. A. Flynn, U. S. Attorney, thereupon reads to the Court the amended complaint of the plaintiff herein; and Robert E. Morrison, Esquire, reads to the Court the answer of the defendants to said amended complaint.

The prosecution, then to maintain upon its part the issue herein, offers in evidence Plaintiff's Exhibit "A," being a copy of proclamation withdrawing the Grand Canyon [30] National Forest; and Plaintiff's Exhibit "B," being a copy of the proclamation creating the Grand Canyon National Monument; and said exhibits are admitted and filed. Counsel for plaintiff thereupon offers in evidence Plaintiff's Exhibit "C," being a certified copy of the defendant's first application for patent; Plaintiff's Exhibit "D," being a certified copy of Departmental Decision of February 11, 1909; Plaintiff's Exhibit "E," being a certified copy of Department Decision of February 29, 1911; Plaintiff's Exhibit "F," being a certified copy of General Land Office Decision of April 3, 1912; Plaintiff's Exhibit "G," being a certified copy of the defendant's second application for patent; Plaintiff's Exhibit "H," being a certified copy of General Land Office Decision of March 23, 1915; and Plaintiff's Exhibit "I," being a certified copy of Departmental Decision of August 4, 1915; and said exhibits are objected to by counsel for defendant upon the grounds set out the Reporter's transcript, and said objections are overruled by the Court and said exhibits are admitted and filed, to which ruling and action of the Court the defendant by counsel excepts. Plaintiff thereupon offers in evidence Plaintiff's Exhibit "J," being a map of the alleged mining claims and improvements thereon, and said exhibit is admitted and filed. L. C. Way is duly sworn as a witness upon behalf of the United States and is examined and cross-examined. Objection is

made by counsel for the defendants to the admission of the testimony of the witness, L. C. Way, concerning the business conducted by the defendants on the alleged mining claims on the grounds that same is irrelevant and immaterial, as said defendants may transact any business they choose on [31] their claims, and said objection is overruled by the Court, to which ruling and action of the Court defendant, by counsel, excepts. Plaintiff offers in evidence Plaintiff's Exhibit "K," being a certain notice given to the Arizona Livery, Messrs. Wilson, Hodges & Wyatt, their agents and employees, which is objected to by counsel for defendants on the grounds that said defendants have the right to give any notice they see fit to any trespassers on their claims, and said objections are overruled by the Court, to which ruling and action of the Court defendants by counsel except.

WHEREUPON, case is taken under advisement by the Court, the defendants being allowed until August 25, 1916, within which to prepare, serve copy and file with Court his brief; and the plaintiff will be allowed until September 5, 1916, within which to prepare, serve copy and file with the Court their reply brief. [32]

In the United States District Court for the District of Arizona.

No. E. 10—(PRESCOTT).

UNITED STATES OF AMERICA

vs.

RALPH H. CAMERON et al.,

Defendants.

Minute Entry Appearing Under Date of Thursday, March 22, 1917.

The above-entitled cause came on regularly for hearing this day, the United States Attorney and J. O. Seth, Assistant Solicitor of the Department of Agriculture, being present upon behalf of the plaintiff, and J. E. Morrison, Esquire, and R. E. Morrison, Esquire, representing the defendants. Thereupon, the plaintiff announces that it rests its case upon the record and testimony already submitted.

Whereupon, a statement of the evidence of R. H. Hetherington, Ralph H. Cameron, S. D. Pepin and Leo Krousop, which was taken in the case of Cameron vs. Bass in the Superior Court of Coconino County, Arizona, July 31, 1915, at Flagstaff, Arizona, was offered by the defendants to sustain the allegations of their answer, and this officer of said evidence, in said form and manner, was made by stipulation of counsel for all parties, in open court, that it might be so presented, in place of actually producing the said witnesses, and objection was then made by counsel for the plaintiff on the ground that the Court was bound and concluded by the decisions of the Secretary of the Interior annulling the Cape Horn Mining Claim, and that the Court could not permit the introduction of any evidence on the part of the defendants for that reason, and said objection was sustained by the Court, to which ruling and action of the Court the defendants by counsel excepted.

[33]

United States District Court in and for the District of Arizona.

E. 10—PRESCOTT.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL,

Defendants.

Decree.

This cause came on regularly to be heard before the Court at Prescott, Arizona, on the 4th day of August, 1916, and the 22d day of March, 1917, the United States being represented by Thomas A. Flynn, Esquire, United States Attorney, and J. O. Seth, Esquire, Assistant to the Solicitor for the Department of Agriculture, and the defendants appearing by Robert E. Morrison, Esquire, and Joseph E. Morrison, Esquire, and evidence being taken, and the Court being fully advised in the premises, now, therefore, it is

ORDERED, ADJUDGED AND DECREED.

1. That the defendants, their agents, servants and employees, and all persons claiming through or under them, be, and they are hereby enjoined and restrained from occupying, using, or asserting any claim or right to the ownership, occupancy, use or possession of, or engaging in business of any kind whatsoever upon or from interfering in any manner whatsoever

with the administration or use by the plaintiff, its officers, agents, or permittees of the lands of the plaintiff described as follows:

> Beginning at corner number one (1) from which the quarter section corner between section twenty-three (23) and twenty-four (24), township thirty-one (31) north, range two (2) east, Gila Salt River base and meridian, bears north fifty-nine (59) degrees, forty-seven (47) minutes east, seven hundred and eighty and four-tenths (780.4) feet distant, thence north eighty-two (82) degrees, twenty-four (24) minutes west, fifteen hundred (1500) feet to corner number two (2), thence north twenty (20) degrees, two (2) minutes east, six hundred (600) feet [34] to corner number three (3), thence south eighty-two (82) degrees twenty-four (24) minutes east fifteen hundred (1500) feet to corner number four (4), thence south twenty (20) degrees two (2) minutes west six hundred (600) feet to corner number one (1), the place of beginning,

excepting that portion thereof comprising the station grounds of the Grand Canyon Railway Company, said above-described lands being the same as those embraced within the so-called Cape Horn Lode Mining Claim, location notice of which is of record in the office of the County Recorder of Coconino County, Arizona, in Book Four of Mines, at page 106, and amended location notice whereof is recorded in Book Five of Mines, at page 363, in said office.

2. That the defendants, their agents, servants and employees, and all persons claiming through or under them, be and they are hereby enjoined and restrained from making any excavations whatsoever in or on the aforesaid lands of the plaintiff; provided, however, that upon written application to this court specifying the extent, place, date of beginning and probable duration of such work, and the names of the parties by whom such work will be done, the Court may upon such conditions, and subject to such restrictions as may seem necessary, allow the defendants during the pendency of any appeal herefrom to continue existing tunnels or shafts to an extent sufficient to comply with the laws governing annual assessment work.

3. That the defendants shall, and they are hereby commanded to, remove within thirty days from date of this decree all deposits of filth, manure, and refuse from said lands of the plaintiff, and to restore the said lands to as nearly as possible their natural state, provided that the officials of the Forest Service shall on application by the defendants designate some suitable place within a reasonable distance from the aforesaid lands of the plaintiff where such manure, filth and refuse may be deposited.

4. That the defendants shall, and they are hereby commanded to begin within thirty (30) days from the date of this decree the removal of all buildings and structures from said lands of the plaintiff, and to complete the removal of such buildings and structures within a [35] period of sixty (60) days from the date of this decree; provided that if an ap-

peal from this decree is perfected in the usual manner within said period of thirty (30) days, then the operation of that portion of this decree requiring the removal of buildings or structures shall be suspended while said appeal is pending and is being diligently prosecuted; and provided further that during said period of thirty (30) days and during the pendency of an appeal taken and prosecuted as aforesaid, the defendant Ralph H. Cameron, his family and domestic servants, and his agents, not exceeding three, in charge of said defendant's mining interests at the Grand Canyon, may occupy said buildings in connection with said mining operations, but no occupancy of said buildings by other parties or for other purposes shall be permitted except under permit regularly secured from the officials of the Forest Service.

5. That this Court retain jurisdiction over this cause for such further orders as may appear proper.

6. That the plaintiff recover of and from the defendants its costs to be taxed by the Clerk.

Done in open court this 23d day of March, 1917, at Prescott.

WM. H. SAWTELLE,

Judge of the United States District Curt for the District of Arizona. [36]

[Endorsements]: No. E. 10 (Prescott). In the Dist. Court of the United States for the Dist. of Arizona. United States of America, Pff., vs. R. H. Cameron et al., Defts. Decree. Filed Mar. 23, 1917, at —— M. Mose Drachman, Clerk. By R. E. L. Webb, Deputy. [37]

In the United States District Court for the District of Arizona.

IN EQUITY—E. 10—PRESCOTT.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL,

Defendants.

Assignment of Errors.

Now come the defendants in the above-entitled cause, and file the following assignments of errors, upon which they will rely, upon their prosecution of the appeal in the above-entitled cause from the decree made by the Honorable United States District Court for the District of Arizona, on the 23d day of March, 1917:

I.

That the United States District Court for the District of Arizona erred in overruling the motion to dismiss, interposed by the defendants and appellants to the complaint filed in this cause, for the reason that the allegations, in said complaint contained, do not state or allege facts sufficient to constitute a cause of action in equity against the defendants, or either of them, or to constitute sufficient grounds in equity for the relief prayed for in the said complaint, as it appears upon the face of

said complaint that the Secretary of the Interior, without any power or authority of law whatsoever, and possessing no function so to do, assumed to make certain pretended findings, judgments, orders, and decisions, purporting to cancel and annul a mining location, to [38] wit, the Cape Horn Mining Claim, fully described in the answer of defendants; and further, holding the land embraced within the boundaries of the said Cape Horn Mining Claim to be a part and parcel of the Grand Canyon National Monument.

II.

That the said United States District Court erred in admitting in evidence, over the objection of the defendants, the certified copies of the opinions, decisions, orders, and adjudications of the Secretary of the Interior of the United States, which purported to cancel and annul the location of the Cape Horn Mining Claim, fully described in the bill of complaint and answer herein; and in holding and declaring said ground to be a part of the Grand Canyon National Monument, for the reason that the said Secretary of the Interior had no right, authority, or jurisdiction whatsoever, and possessed no function to annul or cancel the mining location, and particularly not the mining location known as the Cape Horn Mining Claim.

III.

That the Court erred in refusing the offer of the defendants to introduce the testimony of R. H. Hetherington, Ralph H. Cameron, S. D. Pepin, and

Leo Kruskop, for the reason that the said testimony of the said witnesses would have tended to establish the validity of the said Cape Horn Mining location, as will fully appear from the transcript of said evidence submitted to the United States Circuit Court of Appeals for the 9th Circuit, on this appeal. [39]

IV.

That the said United States District Court erred in rendering, making, and entering its final decree in this case, for the reason that the said decree is contrary to the law, particularly as the said decree is based in part (and practically entirely) upon the said decisions, findings, rulings, and orders of the said Secretary of the Interior, which were and are absolutely void and of no effect, the said Secretary of the Interior possessing no right, authority, power, jurisdiction, or function to make any such decisions, findings, rulings, and orders.

V.

That the said United States District Court erred in rendering, making, and entering its decree in this cause, because the same is contrary to the facts, which show, demonstrate, and prove that the said Cape Horn Mining Claim, from the date of its location to and including the date of the said decree, was and is a valid mining location.

VI.

That the said United States District Court erred in overruling defendants' motion for a new trial, for the reasons set forth in each and all of the foregoing assignments.

WHEREFORE, appellants pray that said decree be reversed, and that the said District Court for the District of Arizona be ordered to enter a decree reversing the decision of the lower court in said cause, and to enter a decree in favor of the defendants and appellants in this cause.

ROBT. E. MORRISON,
J. E. MORRISON,
Solicitors for Defendants. [40]

[Endorsements]: E. 10—Prescott. United States District Court, District of Arizona. United States of America, Plaintiff, vs. Ralph H. Cameron et al., Defendants. Assignment of Errors. Filed Apr. 7, 1917, at —— M. Mose Drachman, Clerk. By R. E. L. Webb, Deputy. [41]

In the United States District Court for the District of Arizona.

IN EQUITY—No. 10.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL,
Defendants.

Motion for Appeal and Order Allowing Same.

The above-named defendants, conceiving themselves aggrieved by the decree made and entered on

the 23d day of March, 1917, in the above-entitled cause, do hereby appeal from said order and decree to the United States Circuit Court of Appeals for the 9th Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and they pray that this appeal be allowed, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the 9th Circuit, and that the operation of the said decree, and all thereof, be stayed, superseded, and suspended, during the pendency of this appeal.

ROBT. E. MORRISON,
J. E. MORRISON,
Solicitors for Defendants.

The foregoing claim of appeal is allowed, and the said decree and its operation is hereby stayed, superseded, and suspended, during the pendency of this appeal, upon the defendants' filing a bond in the sum of $5,000.

WM. W. MORROW,
Circuit Judge. [42]

[Endorsements]: Case No. 10—In Equity (Prescott). In the United States District Court for the District of Arizona. United States of America, Plaintiff, vs. Ralph H. Cameron et al., Defendants. Motion for Appeal. Filed Apr. 7, 1917, at —— M. Mose Drachman, Clerk. By R. E. L. Webb, Deputy. [43]

In the United States District Court for District of Arizona.

No. E. 10 (PRESCOTT).

UNITED STATES OF AMERICA

vs.

RALPH H. CAMERON et al.,

Defendants.

Minute Entry Appearing Under Date of April 20th, 1917.

Upon motion of the United States Attorney, IT IS ORDERED by the Court that the Clerk transmit the original exhibits heretofore filed herein as a part of the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California. [44]

In the United States District Court for the District of Arizona.

E. 10—PRESCOTT.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL,

Defendants.

Supersedeas Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS: That we, Ralph H. Cameron, Niles J. Cameron, B. A. Cameron, S. D. Pepin, and L. L. Ferrall, as principals, and H. C. Lockett and A. H. Beasley, as sureties, are held and firmly bound unto the above-named United States of America, in the sum of Five Thousand Dollars, to be paid to the said United States of America, and for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our successors, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 20th day of April, 1917.

WHEREAS, the above-named Ralph H. Cameron, Niles J. Cameron, B. A. Cameron, S. D. Pepin, and L. L. Ferrall have prosecuted an appeal to the United States Circuit Court of Appeals for the 9th Circuit, to reverse the decree for an injunction granted in the above-entitled suit in the District Court of the United States for the District of Arizona, in equity, on the 23d day of March, 1917.

NOW, THEREFORE, the condition of this obligation [45] is such that if the above-named Ralph H. Cameron, Niles J. Cameron, B. A. Cameron, S. D. Pepin and L. L. Ferrall shall prosecute their said appeal to effect and answer all, damages if they fail to make such appeal good, and shall pay all damages and profits which may result until the final decision of the Circuit Court of Appeals for the

Ninth Circuit thereon, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

RALPH H. CAMERON,
NILES J. CAMERON,
L. L. VERRALL,
S. D. PEPIN,
B. A. CAMERON,
Principals.

H. C. LOCKETT,
A. H. BEASLEY,
Sureties.

State of Arizona,
County of Maricopa,—ss.

H. C. Lockett and A. H. Beasley, being first duly sworn, on oath deposes and says, each for himself and not one for the other: That he is a resident householder and freeholder of said county of Maricopa; that he is worth the sum of $5,000.00 over and above his just debts and liabilities and property exempt from execution.

H. C. LOCKETT.
A. H. BEASLEY.

Subscribed and sworn to before me this 20 day of April, 1917.

[Notarial Seal] HERMAN LEWKOWITZ,
Notary Public.

My commission expires May 5, 1920.

Approved as to form, April 7th, 1917.

THOMAS A. FLYNN,
United States Attorney.

Approved, April 23d, 1917.

WM. W. MORROW,
Circuit Judge. [46]

[Endorsements]: Equity No. 10 (Prescott). United States District Court for the District of Arizona. United States of America, Plaintiff and Appellee. vs. Ralph H. Cameron et al., Defendants and Appellants. Supersedeas Bond. Filed Apr. 25, 1917, at —— M. Mose Drachman, Clerk. By R. E. L. Webb, Deputy. [47]

In the United States District Court for the District of Arizona.

E. 10—PRESCOTT.

UNITED STATES OF AMERICA,
Plaintiff and Appellee,
vs.
RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN and L. L. FERRALL,
Defendants and Appellants.

Cost Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS: That we, Ralph H. Cameron, Niles J. Cameron, B. A. Cameron, S. D. Pepin and L. L. Ferrall, as principals and H. C. Lockett and A. H. Beasley, as sureties, are held and firmly bound unto the above-named United States of America, in the sum of Five Hundred Dollars, to be paid to the said United States of America, and for the payment of which,

well and truly to be made, we bind ourselves and each of us, our and each of our successors, heirs, executors and administrators, jointly and severally, firmly by these presents.

SEALED WITH OUR SEALS and dated the 20th day of April, 1917.

WHEREAS, the above-named Ralph H. Cameron, Niles J. Cameron, B. A. Cameron, S. D. Pepin and L. L. Ferrall have prosecuted an appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, to reverse the decree granted in the above-entitled action on the 23d day of March, 1917.

NOW, THEREFORE, the condition of this obligation is such that if the above-named Ralph H. Cameron, Niles J. Cameron, B. A. Cameron, S. D. Pepin and L. L. Ferrall shall prosecute their said appeal to effect and answer all and pay all costs if they fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

RALPH H. CAMERON,
NILES J. CAMERON,
L. L. FERRALL,
S. D. PEPIN,
B. A. CAMERON,
Principals. [48]
H. C. LOCKETT,
A. H. BEASLEY,
Sureties.

State of Arizona,
County of Maricopa,—ss.

H. C. Lockett and A. H. Beasley, being first duly sworn, each for himself and not one for the other, deposes and says: That he is worth the sum of Five Hundred Dollars, over and above his just debts and legal liability and property exempt from execution.

H. C. LOCKETT.
A. H. BEASLEY.

Subscribed and sworn to before me this 20 day of April, 1917.

[Notarial Seal] HERMAN LEWKOWITZ,
Notary Public.

My Commission expires May 5, 1920.

Approved as to form April 7th, 1917.

THOMAS A. FLYNN,
United States Attorney.

Approved Apr. 23d/17.

WM. W. MORROW.
Circuit Judge. [49]

[Endorsements]: Equity No. 10—Prescott. United States District Court for the District of Arizona. United States of America, Plaintiff and Appellee, vs. Ralph H. Cameron et al., Defendants and Appellants. Cost Bond on Appeal. Filed Apr. 25, 1917, at —— M. Mose Drachman, Clerk. By R. E. L. Webb, Deputy. [50]

In the United States District Court for the District of Arizona.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL,

Defendants.

Statement of Evidence Excluded by the Court.

The following statement of the evidence of R. H. Hetherington, Ralph H. Cameron, S. D. Pepin and Leo Krousop, which was taken in the case of Cameron vs. Bass in the Superior Court of Coconino County, Arizona, July 31, 1915, at Flagstaff, Arizona, was offered by the defendants to sustain the allegations of their answer. This offer of said evidence, in said form and manner, was made by stipulation of counsel for all parties, in open court, that it might be so presented, in place of actually producing the said witnesses. Objection was then made by counsel for the plaintiff on the ground that the Court was bound and concluded by the decisions of the Secretary of the Interior annulling the Cape Horn Mining Claim and that the Court could not permit the introduction of any evidence on the part of the defendants for that reason. This objection was sustained by the Court and the defendants then and there, in open Court, on March 22, 1917, excepted to the ruling of the Court.

Dated April 19th, 1917.

WM. H. SAWTELLE,
District Judge.

Service acknowledged 4/16/17.

THOMAS A. FLYNN,
U. S. Attorney.

Statement examined and found correct April 17th, 1917.

THOMAS A. FLYNN,
United States Attorney. **[51]**

Testimony of R. H. Hetherington, a Witness for Plaintiff.

My name is R. H. Hetherington; I reside in Prescott, Arizona; have resided there since 1888; am an assayer or buyer; have been engaged in this business since 1890; my experience has been mostly in Yavipai County. I made an assay on some samples sent me from the Grand Canyon. (Witness handed sacks.) I received these sacks day before yesterday about half-past five out of the United States Postoffice. These sacks (marked Plaintiff's Ex. "A" and "B" for identification) contained samples of ore which I assayed. I received them at Prescott and assayed the samples in them. On each bag there was a number. The results of No. 1 was: Gold 28, value $56. Silver 24 oz., value $12. Total value. $68.00, and there was a trace of copper. The results of bag No. 2 was: Gold 1.2, value $24. Silver 14.1, value $7.05. Total $31.05. Copper 1.95%. That is my certificate of assay (marked Pl. Ex. "C"

(Testimony of R. H. Hetherington.)

for identification); the little tags were attached with the addresses that were upon each of the sacks.

Cross-examination.

Sixty-eight dollars was the value per ton of the contents of sack No. 1. I have no personal knowledge where these samples came from. Do not know whether they were picked samples or general run.

Testimony of Ralph H. Cameron.

(In answer to Mr. MORRISON.) My name is Ralph H. Cameron; present postoffice address is Phoenix, Arizona; have lived in Arizona since 1883, continuously; have been Sheriff of Coconino County, Deputy United States Marshal for the Northern part of Arizona, Chairman of Board of Supervisors of Coconino County, member Board of Supervisors of Coconino County, and Delegate in Congress, representing Arizona as a territory. Have been mining in quartz mines a great deal of the time since 1888. Most of my mining has been at the Grand Canyon, on and in the vicinity of the Cape Horn Mining Claim; have mined from Anita to the south rim of the canyon, north of Anita sixteen miles, east of the Bright Angel Trail some twenty miles. The first work of any prominence I did was in 1890 and 1891 at the Last Chance mine at Grand View. We did work there for about twelve years and a half. Packed [52] ore to the rim, hauled it by wagon to Flagstaff, and shipped it to El Paso, Pueblo, and other points. Have mined at the present place at Grand Canyon on the rim, two miles and a half south

(Testimony of Ralph H. Cameron.)

of the rim, nine miles south of the rim, also at Anita, mined ore and shipped it to the smelter; also worked the Hogan claim, under the rim, adjacent to the property we are now in controversy over, and shipped ore out of it to the smelters, and returns showed 17% copper.

(In answer to Mr. JONES.) The last mine is the Hogan mine, a little ways west and under the rim.

(In answer to Mr. MORRISON.) That is not to exceed a half mile from the Cape Horn. The Golden Eagle mine designated on the map is about half a mile from the Cape Horn; it is a patented claim. It was the Hogan I took the ore from that ran 17% copper. I am practically familiar with the mining locations that have been located since 1887 in this country up to the rim of the Grand Canyon surrounding the Cape Horn claim, and the Cape Horn itself, and have practically mined under lease and bond on nearly every claim or group of claims in that vicinity for 25 miles square; have had all of these locations under option for some two years and worked them and shipped ore from nearly all of those claims during two years.

About the 10th of April, 1902, I was at the south rim of the Grand Canyon, at the head of the Bright Angel Trail; that day I located the Cape Horn Mining Claim; I discovered mineral in place; I built a discovery monument and laid out the Cape Horn Mining Claim, according to the mining law at that time by building a monument, 300 feet south of dis-

(Testimony of Ralph H. Cameron.)

covery monument. Running easterly for 750 feet on the south side of the land, I built another monument of stone; then I ran in an easterly direction 750 to southeast corner and built a monument of stone; thence running in a northerly direction 300 feet to the end and built a monument of stone; thence ran in a northerly direction 300 feet and built another monument of stone at northeast corner; I judge that is the corner Mr. Way said it was impossible to survey. I built a monument there; it is there now; [53] thence in a westerly direction 750 feet on the north side line, and built a monument of stone; thence westerly 750 feet and built a monument of stone at the northwest corner; thence in a southerly direction 300 feet to the location monument or place of beginning.

These last three monuments that mark the north line of the Cape Horn claim are situated on the south side of the south rim of the Grand Canyon, down about 300 feet under the rim.

The monuments were all built of lime and quartz rock. None of them were less than four feet in height and three and a half to about four feet in diameter at the bottom. Within ninety days I did my discovery location work I wrote out a location notice, placed it in a tin can and put in the discovery monument on the 10th of April, when I made this discovery. Within 90 days from the day I located the claim and posted the notice, I did my location work by sinking a shaft 15 feet deep, 18 feet one way by 6 feet the other. At a depth of at least 10

(Testimony of Ralph H. Cameron.)

feet from lowest rim of the shaft it is in quartz rock, carrying gold, silver, and copper. We never have gone through the thickness of it. I discovered below it, where it crops out, the same character of ore and mineral formation, several hundred feet below in the canyon on the same rim. It would be hard to estimate how thick the vein or ledge is, It absolutely filled the shaft and extended outside. This mineral-bearing quartz was in place. This claim is situated on the south rim of the Grand Canyon, at the head of the Bright Angel Trail, the head of the Bright Angel Trail starts on this claim. The mining district in which it is was never organized, it is sometimes known as Francis mining district, Coconino County, on the 10th day of April, 1902, it was in the Territory of Arizona, now State of Arizona. It was not occupied and up to the present time is not, except the Government (Document shown to witness.) That is a copy of the original location notice of the Cape Horn Lode Mining Claim. (Location notice offered in evidence, marked Pl. Ex. "F.")

We posted and filed and amended location notice of this Cape Horn Mining Claim. (Amended location notice of Cape Horn Mining **[54]** Claim offered in evidence, marked Pl. Ex. "G.")

There has been, as closely as I can estimate, more than $3,000, expended in actual development work on this claim, in running tunnels, open cuts, and sinking shafts. The tunnel we will designate as A is on and under the south rim of the Grand Canyon.

(Testimony of Ralph H. Cameron.)

It extends in to a depth, I think, of 119 feet; is about 6 feet high and 4 feet wide. It is safe to say this work, which is the cheapest work done in that country, could not be done for less than $12.50 per lineal foot. That is a fair estimate, because I do not think you could get a miner to work in that formation that would even undertake it at that price, or even $15 per foot. The tunnel was all run in mineralized formation, practically the same formation I did the location work in, in fact, nearly the entire Grand Canyon is mineralized from top to bottom. We have had ores out of the same tunnel that we have assayed at the Grand Canyon carrying $480 in gold, had as high as 19% copper, and from 12, 14, to 9, 3, 5 in gold and silver.

(In answer to Mr. JONES:) I have spent in the neighborhood of $2,500 to $3,000 in assays. Have had assays made by Mr. Hetherington, Mr. Claypool, in Denver, El Paso and other points. Have had assays made where the assayer has taken the assay at his office, and have had him testify in court as to the assay. My testimony has been based on the shipping of ore and receiving results from samples. The assayer has given his certificate of assay and I have paid the assayer and have relied on his assay and certificate. In many instances I shipped ore and had the returns.

By Mr. JONES.—We move to exclude all the testimony as to mineral in this mine A.

By the COURT.—This is a general statement.

(In answer to Mr. MORRISON:) The lowest

(Testimony of Ralph H. Cameron.)

estimate that could possibly be figured per foot of the shaft in which I did the location work would cost at least $15 per foot. [55]

I sunk another shaft down through the same formation 18 feet; it is about 6 feet by 8 by 18. I would say the fair and reasonable value per foot of this shaft is $15 a foot.

I ran another tunnel, above the location work, near the location monument of the Cape Horn, and a little to the left. That is tunnel B. It is 30 feet in length, and a small cross-cut for 7 or 8 feet, 4 and a half or 5 feet in width by 6 and a half or 7 in height; $12.50 per foot would be fair price for that work. We found copper terminating on the side of the canyon, near the Bright Angel Trail, with the canyon on one side and triangular wall on the other, where we stripped the wall off for some 35 feet, and an average of 4 or 5 feet wide, and in some places it ran 8, 12, and 14 feet high. It is safe to say $500 worth of work was done there. That is on the edge of the canyon, there is small shelf breaking out. We ran an open cut on the other side where the hogback goes through, to see if this mineral extended through. The cut was about 22 feet in length, at the face of the tunnel about ten feet in depth, and about 6 feet in width. It tapered back. It would average 6 or 7 feet in depth at different points. I would estimate the value of this work at $10 a foot for the 20 feet. We have done a little work under the expense of Cape Horn and Golden Eagle claims jointly, possibly on that claim as much if not more

(Testimony of Ralph H. Cameron.)

than on this; some of the work we could have charged on this. This work has all been performed by me or for me since the location of this claim April 10th, 1902. No one was claiming this land at that time. No one was in possession of the ground or claiming any rights there. It was vacant and unoccupied. I made a copy of the location notice of the Cape Horn Mining Claim and had it recorded in the office of the County Recorder of Coconino County. In 1912, the annual labor required by the Federal law, was all done in Tunnel A, more than 15 feet of tunnel, 15 feet long, 4 and a half feet wide and 6 and a half feet high. The fair value of the work in that tunnel is $12.50 a foot. For 1913 the annual labor was the open cut I referred to, 20 feet of open cut. For 1914, the extension of the tunnel above the location monument, [56] or where the location work was done, and the small cross-cut, nearly 18 feet of work in that tunnel, tunnel B.

(In answer to Mr. JONES:) In 1914 18 feet of work was done. I have been in possession of this mining claim since the date of its location, April 10th, 1902. We have built a blacksmith-shop of corrugated iron on the property; a warehouse storeroom for storing pack-saddles; and on the trail right of way, that is now in possession of Coconino County, the present postoffice, a building my brother occupies as a rooming place. Then there is a place used when we were mining out in the canyon for a storeroom. There is a studio, or photograph gallery, utilized by Kolb Bros. for taking pictures. A build-

(Testimony of Ralph H. Cameron.)

ing built by the Cataract Gold Mining Co., I think their name was, when they were operating in Cataract Canyon, which was on the railroad right of way. The railroad ordered it off. I moved the building from the railroad right of way to the Cape Horn Mining Claim, and it is occupied by my brother Bert and his family two or three months in the summer. I am the owner of other mining claims close to the Cape Horn, am extensively interested in mining claims in the Grand Canyon. I haven't business except mining; I have no connection with any other business at the Grand Canyon. There is a postoffice building on the Cape Horn, where the postmistress and her husband live, and he has small garage, a frame building to keep an automobile, near the residence. I believe I have named all of the improvements. A man named Pippin that is selling mineral samples of the Grand Canyon district has a little inferior structure that you could put in a wheelbarrow and wheel it away. I do not know what it is used for.

Cross-examination.

Q. Is there a livery-stable being conducted on this Cape Horn lode mining claim?

By Mr. MORRISON.—I object to the question as irrelevant and immaterial. Overruled. [57]

My brother has two teams that he is hauling tourists out to the rim of the Grand Canyon or wherever they choose to go that the Forest people will permit. He has no livery-stable. We have a black-

(Testimony of Ralph H. Cameron.)

smith-shop; all the tools are in there. It is not a livery-stable. It is a blacksmith-shop. I presume he uses it to shoe his horses; never saw him shoe a horse there. He has teams that he hauls tourists to the rim with, or wherever they choose to go. He keeps them on the Cape Horn claim, and feeds them there; part of the time they are housed, part of the time out of doors; they are not always on the claim; they are fed on the claim and are given hay at times. He keeps his vehicles on the claim; does not use his automobile except for private use.

By Mr. MORRISON.—My objection goes to all this line of testimony. My objection is that the testimony is irrelevant and immaterial, and does not prove any of the issues in this case.

These people are on the claim. They do not pay any rent. I permitted them to stay there. The Farrells are there in the capacity of the Government. I let them stay there. I generally hire men myself for my mining business on this claim; sometimes my brother hires them for me. He has been with me ever since we came to Arizona, has looked after more or less of my mining business; has hired men for me, has seen that the work was done, and has paid them off for me. I reimburse him. I have a secretary; he is just there as a friend and stays there himself, principally down in the canyon; looks after my mining property; takes quite an interest; tends to my correspondence and business; has stuff packed down for me into the canyon. He simply does these things for me as a friend, acts as my

(Testimony of Ralph H. Cameron.)

representative in anything I may ask him. We haven't produced any material cash from this mine. It has been all out-go. We have spent a great deal of money in development work. I had a man at Grand View working some nine or ten years at hard work. I hired lots of men at different times to take ore out of the Grand Canyon, hauled ore, and after working for about twelve years hard continuously was in debt something like $18,000. I never sold the [58] Cape Horn. Have been in controversy so much have been unable to get money enough ahead to demonstrate it, but I expect to sell it for a good big sum. I had at one time some money paid on it by C. Frand Doebler, his present is Chicago; do not know his street address. He has been in the mining business; could not tell you where his office is; he just moved back there; I left him in Nashville. He did not buy the Cape Horn; several others did; about twenty.

Q. Do you know whether or not your brothers, Niles Cameron, or Bert Cameron, has a man soliciting business, that is carrying tourists around to the rim?

By Mr. MORRISON.—We object to this testimony as not relevant to any issue in the case. No. ruling.

I do not know a thing about my brothers' business, either Niles or Bert. * * * What their business is or what they are doing out there at the canyon, that is their business. Have never talked with them, neither of them. My brother has two auto-

(Testimony of Ralph H. Cameron.)

mobiles; I do not know what he uses them for. He may be using them in the tourist business. He was kind enough to drive Mr. Morrison and myself to the depot the other night. I could not state positively that he ever had a tourist on the car. I was on the claim Wednesday and Thursday of last week. I did not know he had any automobiles the last time I was there. The only time I have been there that I knew he had these automobiles was Wednesday and Thursday of last week. I did not see him driving in an automobile with tourists on Wednesday and Thursday. I suppose I saw fifty men around there. I saw 15 or 20 automobiles but do not know who they belonged to. I saw one that my brother had. Could not say what it was doing. There are no county roads there. I haven't any knowledge who drives this machine. My brother drove the one that drove us to the depot. I do not know whether he has a chauffeur. I was never interested enough to inquire. I had other things to do; you fellows have kept me pretty busy. I said I shipped some ore from the Hogan mine, and the samples returned [59] netted about 17% copper. I certainly made money out of it. It is known here as the Hogan, now owned by Dan Hogan and Mr. C. E. Mills. It has not been worked recently, about 2 or 3 years ago we had to shut down all the mines where we had to freight ore and pack it, as we do in that country, owing to the low price of copper. I could not tell you whether it was selling at 17¢ in 1909. It might have been in 1907. I had the Hogan claim under

(Testimony of Ralph H. Cameron.)

lease and bond. I made money out of all of the other claims. I never shipped from the Cape Horn. Ever since I got started have been up against it for cash; have been in a lawsuit all the time. Have kept up the assessment work and spent money in development. Some of the claims were located as far back as 1887. I think we made money in 1888. I do not know that I have made money out of the claims I located at the time I located the Cape Horn. After I located them the same condition had been existing ever since. Some were located later and some located before. There was no work done because we did not have a trail. We had to build a trail in the ore, and it was uphill work. I could not state exactly how many mines I have there now. I think about forty claims. Did not have very many in 1902. I cannot remember that far back.

By Mr. MORRISON.—We object to this as not proper cross-examination, and irrelevant and immaterial.

By the COURT.—What difference would it make about what he makes out of the mine? Supposing you confine your cross-examination as to whether there is mineral there. If there is mineral in the other claims what has that got to do with this. I sustain the objection. Exception.

I could not state positively when the work in tunnel A was begun.

It has been done between the location work and the present time. I would have to go and figure out when the majority of the work was done. I could

(Testimony of Ralph H. Cameron.)

possibly go back and check it up, I could tell from the records in the recorder's office. This work was done prior to 1912. I saw most of the work done.

[60]

I had a man there overseeing it. I hired in the neighborhood of 50 to 75 men to the work at different times. I always paid them out of my own money; the entire expenditure has been expended by me. I was not present when the work 1912, the extension of tunnel A, was done. I saw it afterwards. I paid for it. My brother hired someone to do it; the work was done, and paid for, and affidavit filed in the recorder's office. In 1913, the same way. I did not see it done; I did not have to be there. Copies of the affidavits of labor were sent me. I have been on the ground every year and been over it myself. I went into that tunnel every time, far enough in to see the extension. Have not shipped ore out of that mine; have had lots of assays made. The reason for not mining the property is I have had so much litigation over the proposition since I made the location that I haven't been able to mine the claims properly and demonstrate them to the depth I wanted, and which I intended to. Haven't done it as yet simply because have been a little hard up. That has been practically the reason since 1902. The prominent mineral in that part of the country is silver. Mr. Hetherington's assay shows some gold, silver, and copper. The main minerals there are gold, silver, and copper. I regard this mine as valuable for gold, silver, and copper. I do not know

(Testimony of Ralph H. Cameron.)

about that assay,—did not see that assay taken. I submit it as a good assay of the property. It shows the condition generally. I do know which tunnel it came from. I have had some extremely high assays, practically a gold proposition. I do not think there is platinum on the Cape Horn. Brother Niles has been with me practically ever since we went to the Grand Canyon in 1887. He has been on the Cape Horn part of the time for the last 5 or 6 years. Brother Bert had worked for Babbitt Brothers until about two years ago. His health failed him, and he had to get out in the open air, and has been doing the best he could. My brother Niles has been there mining practically all the time. I think my brother had one automobile last year. I understand he has two this year. The postoffice [61] has been on the claim, I should judge, about 8 years. Mr. Pippen, I think, has been there selling specimens something like a week. I made no complaint about his selling specimens. I am in the mining business. Am glad to have any one demonstrate there is mineral there, so people will understand we have a mineral bearing country there. I think he has several specimens from the Cape Horn. He is expected to be here.

I said there was a number of autos there in the tourist business. I said I had not seen my brother driving tourists to the rim. I do not know of my own knowledge. I was there once in 1912. I am making my home in Phoenix now. Prior to going there my postoffice has been Coconino County for many years. I lived in Flagstaff for many years.

(Testimony of Ralph H. Cameron.)

When I left here was at the Grand Canyon. I could not make an assay. My testimony with reference to assaying of minerals has been based upon reports made by assayers.

(In answer to Mr. MORRISON:) The discoveries in regard to which I have testified, as to their mineral values, has been upon my own personal knowledge, gained from examination and experience and information after twenty years of mining in the Grand Canyon and this claim and others close to it. Not at all from information I have received from others. The discovery of ore made about the 10th of April, 1902, was within the boundary of the Cape Horn Mining Claim, as I staked it out afterwards. In panning some of the ore within the boundaries of the Cape Horn mining claim, we got free gold. We discovered copper glance, pretty high-grade copper, that run 23 or 24, and in one instance 29%, that we *has* assayed. I suppose the ore we were working in out there would run in copper 8% or 9% as an average. In gold, from $5 to $7 per ton, as *and* average. The various tunnels and open cuts and shafts I have spoken of were in mineralized formation. Other stratas were exposed, the canyon being open as it is. Below the rim and within the boundaries of the Cape Horn. Have had a great many assays made from the mineral extracted from the [62] Cape Horn claim, because it has been in litigation so much I wanted to post myself and see if I was correct in my judgment. I found we had assays that run as

(Testimony of Ralph H. Cameron.)

high as 29% copper, some 12% and some 6%. Assays have run $9 in gold, $12.50 in gold, $17 in gold; and some 3, 4, 5, and 6 ounces in silver. Have had a great many assays made of ore from this claim, possibly one hundred in all.

Testimony of S. D. Pepin.

(In answer to Mr. MORRISON:) My name is S. D. Pepin; was born in Central City, Colorado; am 35 years old. My business and occupation has been mining, principally in the Black Hills of South Dakota, Idaho, Arizona, Nevada, and New Mexico, practically everything connected with mining business; have prospected a great deal; worked in some of the smaller mines; did everything connected with mines, running hoisting engine, and such as that; have done both placer and quartz mining; most of my mining has been in quartz, gold, silver, and copper. I know the ground within the boundaries of the Cape Horn claim. Have made examinations as to its mineral character. Have sampled the different veins of the mine, just to get some ore to pan. I found gold, that would include more gold in the mineral than would show in the pan; that is, you would get more values by assay test than by panning. The panning in both instances that I took would indicate gold from $6 to $8. If not heavily alloyed I judge it would probably go $10 to $12. There is no question about the ore on the Cape Horn containing copper values. In some instances the ore is rich, in some it is poor. No one can tell how much a piece of ore will run until it is assayed. I am of opinion

(Testimony of S. D. Pepin.)

there is no question that there are several places on the Cape Horn mining claim where there is 30% copper ore. From my examination of this ore and knowledge of ores gained as a miner, taking the ore as a whole in the shafts and the surface ore, I judge from all I have seen that the ore value would average along between $5 and $6 [63] in gold, 3 or 4 ounces of silver, and from 1 to 9% copper. I think that would be a fair average. I have done actual work on this claim, principally in the location discovery work. The character of the ground was mineralized lime, and quartz, showing quite a lot of copper stain; some of the rock is there on the table, that I dug out. I have examined the workings Mr. Cameron described on the claim. My testimony with reference to the mineral character of the land is from the workings and from the places that have not been worked on. The veins can be traced for two or three miles. I took two samples 2 or 3 days ago,—I believe it was day before yesterday. Sample number 1 came from the breast of the tunnel under Kolb's Studio, the 119-foot tunnel Mr. Cameron spoke of. No. 2 sample came from under Mr. Cameron's below the rim, I judge 125 feet on the next vein, about 10 feet above the Bright Angel Trail, in the ledge; I judge it would be on an air line some 250 feet east of the location discovery. I gave the samples to Mr. Cameron. I think Exhibit "A" and Exhibit "B" are the same sacks I put the samples in. In each sack I put a little piece of cardboard with No. 1 and No. 2, and kept a record there as to where

(Testimony of S. D. Pepin.)

they came from. Then I tied them and delivered them to Mr. Cameron. I took the samples myself, personally.

Cross-examination.

(In answer to Mr. JONES:) I took a general sampling in the breast and in the vein; by breast I mean the face of the tunnel. I broke it down with a prospecting pick. It was securely lodged there, unbroken. No one was present but myself. Mr. Cameron was at the canyon. I made the sampling at his request. My conclusions as to the general run of values, to which I have testified, is from the general geological condition of the country at large, and the mineral running through the canyon as far as it does. I have taken samples from different parts, only in the pan. No specimens on the Cape Horn. I have taken panning samples from the Cape Horn for assay test. [64] Some out of the breast of the tunnel and some below. It would necessitate a test by a chemist to determine how heavily they were alloyed. If heavily alloyed they would be of value. It might be alloyed with platinum, and if so it would be more valuable than gold. I do not believe there is platinum on that particular claim; if there is not and the sample was very heavily alloyed it would be of substantial value. There are several different metals more valuable than gold. If it was not a valuable metal it would not be heavily alloyed. The more valuable metals are the ones that are generally alloyed with gold. I

(Testimony of S. D. Pepin.)

am not an assayer. The places where I judge copper would run 25 to 30% are in different parts of the canyon. There are spots in the tunnel that you can get very good copper ore. They are as large from as big as a pea to as big as a man's head. I did not strike any high grade ore in taking out either of the samples. But I could take anyone on the ground and show them a better grade of ore in the tunnel. Not lots of the high-grade ore but there is lots of low-grade ore in there. I do not think there is enough of the high-grade ore to justify development work from a high-grade ore standpoint, but I do believe there is enough to justify a person working there. You do not have to have high-grade ore to mine. One per cent is enough to justify operating a copper property. That is sufficient to justify a person working a mine. I believe there is a bigger vein of ore there. I do not know. There are several places on the Cape Horn claim where there is more of this 25% and 30% copper. I could show anyone where it is. I do not know whether or not there is any ore in tunnel B that carries 25 and 30% copper. However, I have found pieces that I would judge would go 25 and 30% copper. I would not think this referred to tunnel B. I do not believe I discovered 25 to 30% copper in the open cut 20 feet in length and about 10 feet in width. I did not take samples there, nor in tunnel B. I did not make a careful examination of tunnel B or this cut. I am familiar with the other places that have been opened up, have been all over the ground. I presume there

(Testimony of S. D. Pepin.)

are two or three different places [65] where a person could secure ore to 25 or 30%. I believe near the open cut, west of the open cut, there is a place that has been stripped down for 15 to 20 feet, right above the Bright Angel Trail. That is my best judgment. There are spots along in the vein, I do not know just exactly where those spots are, where a person can get good ore. I have been in the long tunnel three times; the first time two months ago, I presume. The next time I went in there to get some dirt to pan to make a test, found free gold. The third time was day before yesterday. I did not examine the ore inside the tunnel carefully. My first trip to the Grand Canyon was the first of February, 1914. I have been there to stay since May 16th of this year. I went into the mine only once. I came there in May of this year. I worked for Mr. Cameron until July 4th. Worked 1,000 feet below the rim in a mine, and in another mine half a mile south of the ranger lookout. Worked in the Peg Leg mine, down below the schoolhouse, and in the Ida May, south of the ranger's new building. I went to the Cape Horn to stay the 9th of July of this year, and have been there ever since. This is the first time Mr. Cameron has been there since I opened the business. Have been working for Mr. Cameron off and on since the first of February, 1914. My employment has been steady. I was away for a long time. I could not tell how many months I have been working for him. I worked steady from the 16th of May to the 4th of July. After that I was mining

(Testimony of S. D. Pepin.)

in different places. In Douglas in a zinc mine; worked the other side of the Needles. The balance of the time worked my own property in Yuma County, Arizona. Prior to February, 1914, I was working for the Riverside Iron Mine, managing the mine, twelve miles from Apperton on the Salt Lake road.

(In answer to Mr. MORRISON:) Sample No. 2 came from the vein below the rim, right about the Bright Angel Trail, on the Cape Horn claim. I have been in all the workings of this mine described by Mr. Cameron but the one near the postoffice. I believe all of these workings, aside from that [66] have not been in, are in ore, carrying mineral values. The location work shaft was sunk through a portion of the vein; it all carries mineral values, whether gold or silver is a question for the assayer to determine. It shows some copper.

Testimony of Ralph H. Cameron.

(In answer to Mr. MORRISON:) I heard Mr. Pepin's testimony with reference to samples he took two or three days ago upon the Cape Horn claim. I knew nothing about that; I was not present when these samples were taken. I had nothing to do with the taking of the samples. I heard Mr. Pepin's testimony that he handed me the sacks in which these samples were. Those are the sacks handed to me by Mr. Pepin. I put them in the postoffice at Grand canyon and sent them to Prescott. So far as the contents of those sacks are concerned, they were in

(Testimony of Ralph H. Cameron.)

the same condition when I put them in the postoffice and in the custody of the United States postmaster as when Mr. Pepin handed them to me, the only change was, they came to me properly tied up, and I made some tags and addressed them to the assayer, put the postage on them and mailed them myself. Those are the tags I have reference to; I made one out of a postcard; they are both in my handwriting. I addressed them to Mr. Hetherington at Prescott. The contents of these sacks were not disturbed; I did not untie them; I did nothing with the sacks, or the contents, except to put the marks on them, and hand them into the postoffice. I put the postage on them and paid for it.

By Mr. MORRISON.—I offer in evidence the testimony of Mr. Hetherington in connection with the testimony that has been given identifying the samples, and the certificate of *the* Mr. Hetherington as to the values of the samples found in these sacks.

Testimony of Leo Krouskop.

(In answer to Mr. MORRISON:) My name is Leo Krouskop. Am living at the present time at the [67] Grand Canyon. Am forty years old. Since I began earning my living my business and occupation has been mining; have done quartz and placer mining. Have done most everything about a mine in Wyoming, Colorado, Nevada, and Arizona. I am familiar with the ground included within the boundary of the Cape Horn Mining Claim, as described by Mr. Cameron this morning. I heard his testi-

(Testimony of Leo Krouskop.)

mony. I know the ground he was talking about. Have known it about two years. I have been in the tunnels where they took these ores from. I took a sample of it myself, out of the tunnel above Kolb's studio. I went in there and got the sample for panning and panned it. I got a few colors in gold and sulphate of lime. Free gold. That was from the tunnel right above Kolb's studio, on this claim. That is the only panning I made. I made an examination of the ground in which these workings are; went down there and looked at the location work that has been done on the claim; it is the work described by Mr. Cameron as the location work. The ground where that shaft was sunk is silica of lime and quartz and quartz spar; the ledge is in that. There is plenty of copper stain there; I think it carries a little copper. There is plenty of hematite of iron in the ledge. That would indicate gold. I have worked in the Cape Horn, and there is plenty of mineral in it. There is a big ledge down under the workings of the location work on the Cape Horn. The indications are it would carry gold; there is plenty of iron there. From my knowledge of the mine I think the mineral values are of such character as to justify the expenditure of money by a prudent man. I have examined the location work; there is copper in the rock, plenty of stain in the rock, copper stain. I examined the tunnel; I went in there with Mr. Pepin when he went in to take a sample. I went into one of the other workings with him; we went in there and took out this sample and made a

(Testimony of Leo Krouskop.)

panning. I made a panning myself out of the face of the tunnel. I examined the walls in the tunnel. There is a hanging-wall, ledge about three feet wide, all impregnated with hematite of iron. I have also been in the little tunnel, I judge twenty-five feet. There is copper-stain rock [68] that came out of there, out of the face of it, the same hematite of iron as found in the tunnel.

Q. Then, in your opinion, from your examination of this ground, the ore will carry what character of mineral value?

By Mr. JONES.—I object to that; he cannot possibly base any opinion entitled to weight in this court. The testimony is already superficial.

By the COURT.—He has already testified to that. The question now is what were the values. You may give your opinion.

By Mr. JONES.—Note our exception to that ruling.

From the pannings I took I would judge that it would carry from $6 to $8 in gold. It is pretty hard to say what it would assay in copper. There are carbonates of copper. They indicate that farther in depth there would be a body of copper ore, more than likely.

Cross-examination.

(In answer to Mr. JONES:) The $6 to $8 ore I have been talking about is not an average. I saw it in the face of the long tunnel, in the rear end of it. My opinion in regard to this $6 to $8 ore is based upon the panning I made. I made one panning.

(Testimony of Leo Krouskop.)

Did not make a panning from the shaft near the discovery. I guess Mr. Pepin and I were in this tunnel half an hour. We were in there together. He did one panning. He took one sample that he sent away for assay. He took that sample himself. He did not pan that. I was in that tunnel about three times, I would judge. The last time previous to this was three weeks ago. Prior to that it was about six months. On the first occasion I think I went in there with Mr. Miles Cameron. I examined the character of the ore. I examined the character of the ore the second time. I went in there then with Mr. Pepin. The last time I went by myself. I broke the ore down with a pick. When Mr. Pepin and I went there together, he got the samples. I did not get any samples. The next time I did. I think there is spots in there where is 25 to 30% copper. My testimony is in line with Mr. Pepin's. [69] I have seen other spots around there that had that amount of copper on the location work, and also at the little tunnel, right under the rim. The last two times I went in there at the request of Mr. Cameron's foreman up there. I did not know I was to testify at this trial the first time; I knew it when I made the last one. I was pretty friendly with Mr. Cameron; have been for about three years. Have been mining for him most of the time; was driving for Niles Cameron part of the time, carrying tourists around; he is located at the Grand Canyon on this mining claim. I got a sample of ore with colors in gold out of the tunnel. On ac-

(Testimony of Leo Krouskop.)

count of the presence of iron hematite there is gold. It includes gold, sometimes indicates other things; as a rule, it indicates pretty good mineral, probably not always gold, but nearly always gold; as a rule it generally pays. It is a good indication to follow. The color shows copper in there, green and blue, and green is called malachite. You cannot tell from looking at a deposit of that character how much it will run to the ton. You can tell copper in the blue color. It is an absolute surety there will be copper in it. It may be in very small quantities. I did not mention silver.

Testimony of R. H. Cameron (Recalled).

(In answer to Mr. MORRISON:) I gave Mr. Bass no permission whatever to enter into possession or go upon this Cape Horn Lode Mining Claim in December, 1913. He entered upon it against my will. I never consented in any way that he go upon that ground for any purpose. He has not been in possession of that ground since December, 1913.

(In answer to Mr. JONES:) He was not in possession from October to December. He never has been in possession. He went on the land; I knew he was on the land; I knew he had some lumber on the land. I cannot state positively whether he was on the land after December. [70]

Mr. MORRISON.—If the Court please, I offer in evidence for the purpose of further showing the ownership of this property by Mr. Cameron, the complaint and answer, and findings of fact and con-

(Testimony of R. H. Cameron.)

clusions of law and the judgment in the case No. 724, which was begun in the court which was the immediate predecessor of this court, the district in and for the County of Coconino, and entitled Ralph H. Cameron v. The Grand Canyon Railway Company. In that case judgment was rendered in favor of Mr. Cameron; that he was the owner of this mining claim with the exception of the area that is mentioned in the judgment. [71]

[Endorsed]: No. E. 10 (Prescott). United States District Court, District of Arizona. United States of America, Plaintiff, vs. R. H. Cameron et al., Defendants. Statement of Evidence Excluded by the Court. Filed May 8, 1917. Mose Drachman, Clerk. By R. E. L. Webb, Deputy. [72]

In the District Court of the United States in and for the D ct of Arizona.

E—10.

Before Hon. WILLIAM H. SAWTELLE, Judge.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN and L. L. FERRALL,

Defendants.

August 4 and 5, 1916.

APPEARANCES:

For United States of America:

THOMAS A. FLYNN, Esq.,

J. O. SETH, Esq.,

J. H. LANGSTON, Esq.,

S. L. PATTEE, Esq.

For Defendant:

ROBERT E. MORRISON, Esq.

Statement of the Evidence. [73]

By Mr. FLYNN.—And we also have the proclamation of the 11th of January, 1908, by President Roosevelt, creating the Grand Canyon National Monument.

By Mr. MORRISON.—These are all in the statutes, and if it is going in as a part of the record in the case, why I object to the proclamation on the ground that the same is void and is not in accordance with the Act of Congress of the United States authorizing the establishment of national monuments. Of course, that question is raised by way of a law point, and it is raised by our answer, and that is the only objection that I can offer at this time.

By the COURT.—It may be filed for the convenience of the Court.

By Mr. FLYNN.—Now, we have a certified copy of the defendant's, Ralph Cameron's application for patent, which we offer.

By Mr. MORRISON.—We object to that for the reason that it is incompetent, that it does not, in any way, affect the issue in this case, as presented by the pleadings.

By Mr. SETH.—That is admitted in the answer.

By Mr. MORRISON.—It is admitted that we did make our application. We can't deny that, because the application was made and the point that I desire to make at this time is, and that will be the objection that I will make to all of these subsequent offers of evidence relating to the decision of the Secretary and all of that kind of business, that the Secretary of the Interior had no authority whatever to cancel the location of the Cape Horn claim; that he had no jurisdiction or power, notwithstanding the fact that there had been an application for a patent; that when the application for patent was denied, then that his jurisdiction [74] ceased, the Land Department's jurisdiction ceased as to that land, and that then we went back to our title by possession under our location notice. That is the objection that I make to this—to all these exhibits that are to be offered at this time.

By the COURT.—Objection is overruled. It may be admitted.

By Mr. MORRISON.—Exception.

By Mr. FLYNN.—Now, I offer a certified copy of the decision of the Secretary of the Interior dated February 11th, 1909, in which the defendant's application for patent was denied, the location cancelled, and the land embraced within the so-called claim restored within the National Monument.

By Mr. MORRISON.—Same objection.

By the COURT.—Same ruling.

By Mr. MORRISON.—We also note an exception.

By the COURT.—Yes, you may have an exception to each of the rulings of the Court.

By Mr. FLYNN.—We next offer a certified copy of the Department decision of November 29, 1911, denying motion for review of the previous decision.

By the COURT.—It may be admitted.

By Mr. MORRISON.—Same objection.

By the COURT.—Same ruling.

By Mr. MORRISON.—Exception.

By Mr. FLYNN.—We next offer a certified copy of the decision of the Department of the Interior. dated April 3, 1912—decision of the General Land Office, signed by the Assistant Commissioner.

By Mr. MORRISON.—Same objection as to the previous offer. [75]

By the COURT.—Same ruling.

By Mr. MORRISON.—Exception.

By Mr. FLYNN.—We now offer certified copy of the defendant's second application for patent, the same being dated the 28th of July, 1914.

By Mr. MORRISON.—Same objection as to the other offers relating to the application for patent.

By the COURT.—Same ruling.

By Mr. MORRISON.—Exception.

By Mr. FLYNN.—We next offer a certified copy of the decision of the Department of the Interior dated March 23d, 1915. This is the Land Office decision rejecting the second application.

By Mr. MORRISON.—Same objection as to the other offers.

By the COURT.—Same ruling.

By Mr. MORRISON.—Exception.

By Mr. FLYNN.—We next offer a certified copy of the Department's decision dated August 4, 1915. This is by the Secretary of the Interior finally denying the second application on file from the General Land Office by the defendant.

Testimony of L. C. Way, for Plaintiff.

L. C. WAY, being called as a witness on behalf of the United States and first duly sworn, testified as follows:

Direct Examination by Mr. FLYNN.

My name is L. C. Way. I reside at the Grand Canyon, Arizona, and am a forest ranger. I have been a forest ranger for three years. My duties consist of conserving the National Reserve of the Tusayan National Forest, Grand Canyon National Monument, providing for adequate accommodations for the public to enable them to visit the Grand Canyon and [76] see the beauties with the least possible trouble. I am a surveyor and have been surveying almost continuously for the last seven years, previous to which time I had had experience in Michigan as a surveyor. Surveying is a part of my official duties. As one of the acts of my official duties I made a map of the locality surrounding this claim within the Grand Canyon National Monument and the Tusayan National Forest of the Grand Canyon. I made this map in 1913, and it is made from my own observations, field observations and notes, with the possible exception of the Cape Horn, and I took the notes that were furnished me by the Surveyor-General of Arizona, run out the tie lines, and then

(Testimony of L. C. Way.)

crossed and located the different corners of the Cape Horn, with the exception of the northeast corner, which was located over the rim of the canyon, in what I considered an almost inaccessible location and rather dangerous to attempt to locate it, and since the three corners gave me the area involved, it was unnecessary to look for it further off the northeast corner; I obtained that from the other three corners. This map does not contain a note of all the improvements at and around the Grand Canyon and particularly the Cape Horn claim; there is a garage there, erected by Mr. Ferrall since I made the survey.

In delineating on this map the boundaries of the Cape Horn lode, I took the notes of the Cape Horn claim supplied by a blue-print furnished by the Surveyor-General's office, and run out the tie lines to one of the corners and identified the rock in place as having the same numbers and legends as furnished by the field-notes, run out the further boundaries of the claim. If I remember correctly the number one corner was the southeast corner of the claim, and from thence I ran westerly to the southwest corner of the claim, thence northerly [77] to the northwest corner of the claim, which is situate in the Bright Angel Trail. The cornerstone had been removed. Understand that this was the official survey under the application for the patent of the Cape Horn Lode Mining Claim. All the buildings and other things designated or delineated on this map within the boundaries of the Cape Horn, are located

(Testimony of L. C. Way.)

accurately by actual survey as made by me. They are accurately located on the map with reference to the boundaries of the Cape Horn, and there is no question of "more or less." The word "Cancelled" was placed on the map in brackets under the Cape Horn lode because the records in my office show that the claim had been cancelled by the Secretary of the Interior; by no other authority.

By Mr. MORRISON.—We have no objection to the map itself, except that we think that this word "cancelled" should not be on there at all.

By the COURT.—It may be erased, and I would suggest that the witness outline with a pencil the improvements or structures placed thereon since the map was drawn, for the Court's convenience, not as an accurate location of them, but an approximate.

The WITNESS.—(Map referred to by witness in evidence as Plaintiffs' Ex. "J.") The survey was made in the fall of 1913, and the map during the winter of 1913 and 1914. The station grounds on the map are here (indicating); the improvements indicated by the letter "A" on the map is the annex to the Bright Angel Hotel, within the railroad station grounds; the one indicated by the letter "B" is Bright Angel Camp, and is wholly within the station grounds. The improvement marked "C" is another addition or annex to the Bright Angel camp, and is wholly within the station grounds. The improvement marked "D" is known as the "Lookout," there is a curio store there owned by the railroad company; and that [78] maintains a telescope

(Testimony of L. C. Way.)

there for people to examine the north rim of the Canyon, and down in the Canyon as well. All the improvements I have described are owned by the railroad company, and this last improvement marked "D" is wholly within the station grounds. Outside of the limit of the station grounds there is a little retaining wall to the flight of steps that have been built from this building down under the rim of the Canyon for an additional lookout building by the railroad company; by station grounds I mean the railroad station grounds, the Grand Canyon Railroad station grounds; which were established by Act of Congress in 1898. The south line of the station grounds are identical with the south line of the Cape Horn Mining Claim.

The point marked "E" on the map is not an improvement. It is an area that was set aside for Mr. W. W. Bass for the purpose of erecting a livery office for the convenience of his passengers where they could load into their carriages and change their clothing for the trail ride; there is nothing at all there except the stakes that I established.

The place marked "F" is a building erected by Mr. Pepin. It is now used for the sale of mineral cabinets and soda fountain. The first building there was erected in July, 1915. That building was later torn down and the larger building erected on the same site. That took place, I believe, in December, 1915, and an addition was added to that, I believe, in May, 1916, a small addition for the soda fountain.

(Testimony of L. C. Way.)

"The improvement marked "G," which is immediately west of the one marked "F," within the boundaries, is known as Kolb Brothers' Studio. They have a moving picture show in connection with it, showing their trip down the Colorado River, through the Grand Canyon, and also have the finishing [79] of kodak pictures and the sale of works of art. The building has been there for a number of years, before I came, I do not know how long.

The improvement marked "H" is a building occupied exclusively for residential purposes by Mr. Emery Kolb and family. He occupies a part of the building and Mr. Gilliland, a man who has been employed by Mr. Niles and Burt Cameron this summer occupied the other part. When I first came to the Canyon Mr. Cameron's mother occupied a portion of that building. She has since moved away.

The group of improvements marked "I," just couth of "H," is composed of the postoffice; the southeast building of the group is the postoffice. One room on ground floor is used for this purpose, another is used by Mr. Ferrall for the sale of postcards and Indian baskets. The postcards have been removed. A few baskets are still in the showcases. A small building directly to the north is used by Mr. Niles Cameron as a bedroom, and, I believe, as an office; the one north of that is a garage built by Mr. Ferrall, which was built in the fall of 1914, if I remember correctly, and the one southwest of that is a residence occupied by Mr. and Mrs. Ferrall. The two buildings to the west of that are sheds, woodshed and coalshed. That is all of the buildings within

(Testimony of L. C. Way.)

that area that is fenced off. The outer lines now *surround* those improvements represent a fence and these improvements are completely enclosed, with the exception of the garage, which extends about a foot, perhaps, beyond the fence, possibly on a line with the fence. On this building (indicating), is the word "Office" and nothing else; this is the same building used by Mr. Niles Cameron as a bedroom. On the second floor of the postoffice, Mr. Ralph Cameron and his representative, Mr. Zachau, have an office, and there are also several sleeping rooms on the second story that are used by the different employees of Mr. Cameron as sleeping rooms.

The larger of the two improvements designated as "J" is a stable used by Mr. Niles Cameron in connection with his livery [80] business, and the smaller just south of that, which is marked "K" is a sheet-iron building, the same as the stable. I have never seen the inside of that building, and don't know for what purpose it is used.

The improvement marked "L"; just south of "K" is a building used as a residence by Mr. Burt Cameron and family at the present time. This last winter it was used by several people, Mr. Gilliland and Mr. Crushand, I believe, or some such name as that, and McMurdy; they were in the livery business there in the absence of Niles and Burt Cameron; at the present time it is used by Mr. Burt Cameron as a residence.

The little improvement west of "H" is a comfort house, toilet. I do not know by whom it is maintained; it is really maintained by no one. It is on

(Testimony of L. C. Way.)

the rim of the Canyon, and is in a very unsanitary condition. I don't believe anyone takes care of it, or attempts to take care of it. I couldn't say who it was erected by. It was there before I came there. It is not used by the officials of the Forestry Service; they have nothing to do with it.

The stables are marked "J" on the map; they are not kept in a very sanitary condition. It is a dirt floor, and there are many flies, and it has been Mr. Cameron's habit to feed his horses just outside of the stables at the noon hour; Mr. Niles Cameron. He has two teams feeding there during the noon hour, and they are naturally depositing more or less manure and flies gather there, make it a breeding place; that is between the stables and the rim of the Canyon; the place there is perhaps thirty or forty feet between the stables and the rim. This is the rim (indicating on the map.) There is really two, what you might call a double rim to the Canyon. The one I have marked on the map is the outer rim, and above there, there is what we call, perhaps, the inner rim, which is [81] more of a little bench or bulge that takes in Kolb Brothers' studio; this inner rim is nearer to the stables than the outer rim; this inner rim is south of the outer rim; at the stables the upper rim extends back perhaps twenty or thirty feet at one point. The manure pile there is a little to the southwest of the stables; it is approximately fifteen feet high at the end and approximately twenty-five to thirty feet long. There is a slope from just directly back of the stables, hill-like, and it starts in on the ground there and extends out on a level until they get out within about

(Testimony of L. C. Way.)

twenty-five feet of the scenic road. That is the scenic road, following the rim of the Canyon, sometimes called the rim road. (Marks same on map.)

Tourists and visitors in coming west to view the Canyon ordinarily take the road along the rim of the Grand Canyon, in front of the Bright Angel, and from there to the point of the trail in the neighborhood of Kolb Studio, and in back of the Kolb Studio, and immediately south to a building used by Pepin, just in back of the building marked "F." The natural route is along the rim of the Canyon, and when they reach that point, instead of following the rim of the Canyon, they seem to turn and come down in front of the postoffice; the natural road in going west is along the side of the stables, between the stables and the rim, but very few people go that way; I have seen people go that way, and turn around and go back. There is a road going back in by the El Tovar stables, south of the railroad right of way, but it is not an ordinary course for visitors; it is out of the way. I venture to say that not one in a thousand would travel that way. There is nothing of scenic interest for them on that road; all of the travel is as close to the rim of the Canyon as they can possibly get. [82]

The northeast area of the Cape Horn lode is over the rim of the Canyon, and is inaccessible. I have tramped over the hills considerable, and I don't care to attempt to go down in there myself. It is almost perpendicular; very dangerous, and is not put to any use by anyone. The only route that can be travelled with safety over the portion to the northwest of the claim is over the Bright Angel trail. The rest of it is

(Testimony of L. C. Way.)

very precipitous from here down. (Indicating.) The area upon which the improvements are located, exclusive of the improvements on the station grounds, is very level, but somewhat rocky. The railroad approach to the Canyon, according to the map, comes in from the west, and is so designated on the map. I will mark the center line, "railroad, main line." The terminus of the right of way, the railroad right of way, is the initial point of the station grounds. The depot is located on the station grounds. I have marked it, it is approximately four hundred feet east of the terminus, and this thing that looks like an air-ship is the El Tovar Hotel, and I have so designated it. All of the area occupied by the El Tovar Hotel and the depot constitutes the station grounds. The ground north and east of El Tovar and the north and west, this area noted rim, is very level on the rim of the Canyon. The improvements along the rim just northeast of El Tovar consist of guard-rails in front of the El Tovar, in fact, extending down almost to the Bright Angel; also a wall of rock; and also a range finder for locating the different temples, so called, within the Canyon, the benches for the convenience of tourists. There are walks within the railroad station grounds, and extending to the east, perhaps six hundred feet to the east of the station grounds along the rim of the Canyon. The ones within the station grounds were built by the [83] railroad company. The other, I believe, was built by Mr. Verkamp. There are no walks west of the station grounds with the exception of a little walk built by

(Testimony of L. C. Way.)

Kolb Brothers that extends from the head of the Bright Angel Trail to their studio. It was, I believe, about two feet wide originally. I mark it on the map "Walk." It is, perhaps, one hundred and fifty to two hundred feet long. There was a guard-rail along that walk, and when Mr. Pepin erected his building, to widen it, he put eight foot in front of the little building that he erected, and that was all, and replaced the rail. That walk leads to Kolb Brothers' studio only, and is off of the trail right of way within the area of the Cape Horn.

There are walks constructed on the station grounds within the exterior limits of the Cape Horn lode, which extend along the rim of the Canyon. It stops here at the "Lookout," or this studio marked "D." It extends from the eastern end of the station grounds to the studio or "Lookout." There are no walks west of Kolb Brother studio, and none on the Cape Horn Claim, exclusive of the area within the claim designated as station grounds, with the exception of the one to Kolb Brother studio, about twenty-five hundred feet long, but there is a walk between the postoffice and the building marked "H"; an old walk from this building to a point about here (indicating), just connecting these buildings is all.

I have not noted the Grand Canyon National Monument boundary on my map, but do so now. The Mounment Boundary is this road extending along here (indicating). and I am marking it "National Monument Boundary." That is the south boundary, and it is the same all the way through the map; it is

(Testimony of L. C. Way.)

a double line; that is the road, extends over in here, following this line off from the map; it is the southern boundary of the [84] Grand Canyon National Monument and is a section line to the east point as shown on this map, and runs south from that point. The southern boundary of the Tusayan National Forest is, at that point, approximately twenty-four miles distant. I have not indicated the northern boundary of the National Monument on this map; that is on the north rim of the Canyon. The width of the National Monument across from these grounds which I have marked is, I believe, twenty miles. It is on the other side of the Canyon; the Canyon makes a big circle in there.

I have indicated works in the nature of mining improvements on the map; this (indicating) is a cut, an open cut, approximately six or eight feet wide, and about ten feet deep; it is approximately fifty feet southwesterly from the stables, the large stable marked "J." There is a tunnel approximately seventy-five feet south of Kolb Brothers' studio, marked "G." That tunnel is closed up, boarded up. Sometimes it has been used very extensively as a cellar for storage of potatoes and vegetables, and such stuff. That is, I should judge, about twenty-four feet long and about six by four. There is another, it is rather hard to tell whether it would be a cut or a tunnel. It is known as location work. That would be approximately in the center of the west end line of the Cape Horn and about thirty feet under the rim of the Canyon. There is a point projecting

(Testimony of L. C. Way.)

out from the rim, and that point—at the point the tunnel is at, is only about four feet through, and then started to—from the Cape Horn and the Golden Eagle, and it looks like a hole in the wall more than a discovery tunnel.

There are some buildings which I will mark "Ma" and "Mb." "Ma" is marked "Men's" and "Mb" is marked "Women's." They are [85] toilets. The one which I have marked "Mb" is in very poor condition, very unsanitary condition. It has never been cleaned out. The vault is nearly full. There have been no disinfectants put in; old papers are strewn around, and so forth, and that is the condition of both. The vault is really exposed in the "Ma"; that is, the back part of it; there is really no vault; it is just simply put in on the rim of the Canyon; it is practically on the rim of the Canyon, and the vault is up the Canyon itself. It is large enough for all reasonable purposes. I believe it is visible to those passing up and down the Bright Angel; but I wouldn't say positively about this, from the Bright Angel Trail; I wouldn't say positive. Straight across from the Bright Angel Trail to this toilet is about two hundred and fifty feet; between two hundred and two hundred and fifty. It is not observable from the Kolb Brothers' studio, because that studio is under the rim of the Canyon, but it is observable to anyone walking under the rim of the Canyon back of the improvement designated as "H," if they get so that the improvement "H" does not obstruct the view. The distance

(Testimony of L. C. Way.)

between the manure pile which I have designated and the scenic highway or scenic road is about twenty-five feet from the edge of the manure pile to the scenic road, that is, the front of it where it is so high. There is a large sign on the Cape Horn claim indicating the carrying on of business there; this sign is almost down about eight or ten feet west of the west end line of the station grounds and reads: "Cameron's Livery." I don't know who erected it there; it was there when I came. There is a platform about six feet south of the sign where Mr. Burt Cameron and Mr. Niles Cameron used to load people; Niles Cameron in particular. [86]

Mr. Niles Cameron has been conducting a livery business on the Cape Horn claim for three years that I know of.

Mr. Burt Cameron conducts an auto livery business on the Cape Horn claim; Mr. Pepin, S. D. Pepin, one of the defendants in this case, conducts a business selling small mineral cabinets, ice cream and soda water, and has conducted such business since July, 1915, Kolb Brothers have conducted a business of selling works of art, photographs of the Canyon, moving pictures, and Mr. Ferrall, L. L. Ferrall, up to last winter, sold postal cards and baskets, Indian baskets.

Mr. MORRISON objects to all this testimony for the reason that if it is a valid location of a mining claim, there is no objection to business being carried on on the surface.

Objection overruled.

Exception.

(Testimony of L. C. Way.)

The WITNESS.—Mr. Ferrall, one of the defendants in this case; his business is not very extensive; and that is all that I recall. Mr. Pepin erected his building in the forepart of July, 1915. I had a conversation with him in regard to it in my capacity as a forestry official, and I informed him that it would be necessary for him to take out a special use permit if he intended to conduct a business in the National Forest; otherwise he would be operating in trespass if he did not receive a permit from the Forestry Service. I asked him if he cared to make an application, and he said he did, and gave me the application, and I told him that he would have to discontinue work on the building until he secured a permit, and he replied that he would see Mr. Cameron about it. I made report on his application and submitted it to my superior officer. The permit was not issued, nor allowed, for the reason that the policy of the Washington office is not to allow any additional buildings on the rim of the Grand Canyon, and that they wish to preserve it in its natural state, as far as possible, and for the further reason that there was other parties [87] conducting business at the Grand Canyon along the same lines at that time, these other parties being the El Tovar people, the railroad and Kolb Brothers.

As a forest ranger it is part of my duties to study conditions and see if there can be anything done to make improvements at the Grand Canyon to make it more pleasant for the tourists. It is part of my duty to look into those matters, and, after deciding what

(Testimony of L. C. Way.)

is necessary, to report them to the proper officials for action. The only report along this line was the report on the trail to extend from the end of the walk at the railroad station grounds along the rim of the Canyon as far as Hopi. Approximately two thousand feet of that was within the disputed land here. It was only about six hundred feet within the Cape Horn claim. The other is another claim. My reasons for reporting on that walk as a necessary improvement were that ninety per cent of the people who visit the Grand Canyon drive or walk to Hopi Point. Hopi Point is approximately a mile and three quarters from Bright Angel, a little west and north. Hopi Point is almost due north of Bright Angel Camp at the rim of the Canyon—extends back. Bright Angel Camp is the Bright Angel Hotel, operated by the Harvey people, the El Tovar people, that is, the railroad company. None of these improvements were ever made subsequent to my report. The livery station mentioned is one of the places where tourists may have access to carriages and automobiles; there are only two places available for the convenience and comfort of tourists. One is on the Buttinski claim to the east of the railroad station grounds, and the other is within the limits of the Cape Horn claim at the west of the railroad station grounds; that is the most desirable location we have left; by "have left" I mean that the railroad station grounds cover the balance of it; I am not including any part of the station grounds in my answer. [88] The Government has no control of any kind over the

(Testimony of L. C. Way.)

station grounds, neither by right of reservation or permit of the railroad company that I know of. I am familiar with conditions there last summer; approximately two hundred thousand people visited there from May to November. In regard to difficulties existing there with respect to the handling of all these people, and affording them livery accommodations, I would say that we had fifteen or sixteen applications for livery permits, which were granted, besides the permits issued to Mr. Bass and to the Santa Fe Land and Improvement Company; the difficulty was in finding the proper place for the independent liverymen, so-called, to solicit their business and load their passengers; by "so-called independent liverymen" I mean the liverymen outside of the Santa Fe Land and Improvement Company; they are locally known there as the independent liverymen. I don't include any of the El Tovar liverymen; their accommodations were adequate; they load their passengers and solicit business within the railroad station grounds; we had nothing to do with that. None of the defendants in this case have a permit to carry on any kind of business on the National Forest. Mr. Cameron was operating a livery business on the Cape Horn claim, and he insisted on his carriages and automobiles being loaded out first before any business was booked for the other permittees operating under a permit from the Forest Service, which resulted in great confusion. For instance, a tourist would desire to take the rim drive in the morning or in the afternoon. If Mr. Cam-

(Testimony of L. C. Way.)

eron's livery happened to have any reservations left, they would book them. If they had no reservations left, they would say they were very sorry but all the carriages were filled up for the entire day, but that they could get them an auto carriage, and auto drive to Grand View Point in the morning or the afternoon. [89] After Mr. Niles Cameron's carriages were all loaded out for the entire day, Mr. Burt Cameron's automobiles were loaded out for the entire day. Then they would book people for the liverymen who were operating under the Forest Service permit, but until that time they would not book a party for the Forest Service permittees, naturally resulting in tourists being deprived of certain trips that they cared to take in many cases. I had a conversation with Mr. Ralph H. Cameron with respect to the right of these independent permittees to operate on the Cape Horn claim. It was in September, 1915. It had been reported that they had forcibly ejected some of our permittees from the Cape Horn claim. I went to see Mr. Cameron in his office and we had a conversation on the subject. He showed me several copies of notices that he had mailed or delivered to some of our permittees, ordering them to keep out from the Cape Horn claim, and the Buttinski; the parties to whom he had addressed these notices to were Mr. Bass, Mr. Rush, Mr. Koppel, the firm of Hodges, Wilson & Wyatt, and Mr. Brown. I believe that is all. He told me that in addition to having sent these notices he had put them off, and if necessary he was going to keep them off; that, if necessary,

(Testimony of L. C. Way.)

he would hire men to keep them off.

The supplemental affidavit which I made, which was filed in this case on December 25th, 1915, had an exhibit attached to it which was given me by Mr. Wyatt, of the firm of Hodges, Wilson & Wyatt, one of the permittees, and the signature is that of Mr. Ralph H. Cameron.

Mr. FLYNN.—We offer this exhibit in evidence.

Mr. MORRISON.—We object to the offer for the reason that it is immaterial, irrelevant, and for the further reason that Mr. Cameron, as the owner of the Cape Horn mining claim, had a perfect right to send any notices to any persons to refrain from trespassing upon his mining claim, and that is all that this notice is. [90]

By the COURT.—Objection is overruled. It may be received.

Mr. MORRISON.—Note an exception.

(Exhibit received in evidence and marked Plaintiff's Ex. "K.")

Cross-examination.

I know where the right of way of the Bright Angel Trail is situated (indicating same on the map); the original location of the Bright Angel trail is not as it is to-day. The location as filed is not the same as the location is to-day, according to the best information I can get. I cannot give the location as it is to-day, but what is suppposed to be the true location of the trail, according to the map filed in the Recorder's office here in Prescott, does not conform to

(Testimony of L. C. Way.)

the location of the Bright Angel Trail as it is located on the ground at the present time; the location of the trail has been changed. I have the trail in on the map, but I haven't the width of it. The width of the right of way is forty feet; that is twenty feet on each side of the trail; thirty-five or forty feet, I have forgotten just exactly what the width is. The entire width of the trail itself is not over three feet. The right of way as it is now does not conform to the right of way of the trail as filed and recorded. The right of way as recorded says that the trail shall start and come in here to the west of the Cape Horn claim. The old original trail is still in evidence to the west of the Cape Horn. That is the right of way of the trail. I have checked it over from the plat that is on file in the recorder's office, and it corresponds to this trail as near as may be. The Bright Angel trail location and the right of way is really fifteen hundred feet west of where the present trail is. I checked it over from the blue-prints on file, also from the old residents of Grand Canyon, who have told me where the original Bright Angel is located. [91] Since that time it has been changed to its present location, so that it is not, according to the records on file, this does not constitute the Bright Angel Trail, and so there is no right of way over that piece of ground, according to the best of my knowledge. The Bright Angel Trail as I have it delineated upon the map now, is the trail for the use of which Coconino County is receiving compensation, and is recognized by some people as the property of

(Testimony of L. C. Way.)

Coconino county; all people who go down there, down this trail, using mules or horses as conveyances, pay a dollar a head, and that money goes to Coconino County; and that has been the rule for years past. According to the information I have, this Bright Angel Trail that I have designated has been in existence and use about fifteen years; that is what is called the Bright Angel Trail at this time.

I have been in the Canyon three years and during that time all the work that has been done on that claim is the annual assessment work; that was done just south of the Kolb Studio; in the tunnel south of Kolb Brothers' Studio is the work I know of as having been done there. Most of the assessment work for the Cape Horn has been done on the Golden Eagle; they are contiguous; there has been a little work done on this particular claim; that was done in the tunnel south of Kolb's studio. So far as I know, there has only been one annual assessment work done on the Cape Horn since I have been at the Canyon; that was done in the tunnel, and the other two years it has been done on the Golden Eagle, which applies to the Cape Horn. The work done on the Golden Eagle claim consisted of putting a shaft down a little further, and doing some work in the tunnel on the Golden Eagle, and that is all. The tunnel south of the Kolb Studio is about twenty-five to thirty feet in length. It is seventy-five feet south of Kolb Brothers' Studio. I don't know of any tunnel on the ground within the boundaries of this [92] Cape Horn claim approximately a hundred

(Testimony of L. C. Way.)

and nineteen feet in length. I would not say that there is not, but I don't know of any such tunnel.

I wouldn't say positively that this tunnel which is seventy-five feet south of Kolb's Studio is only twenty-five to thirty feet in length; there may be some drift in there that I did not explore; I should judge that it was between twenty-five and thirty feet from the base of the tunnel. I was in there last spring with Mr. Ferguson. There may be some drifts in there that I did not explore. I was just in the tunnel a short distance. I do not say that there is no tunnel on the Cape Horn claim that is approximately a hundred and nineteen feet in length, but I do not know of any that long, and I covered it pretty thoroughly. There is one tunnel I did not examine very closely; I went into it a short distance and Mr. Ferguson went back to the face of it, and I judge from that it was twenty-five to thirty feet long. This tunnel which I am speaking of is perhaps a hundred feet from the Pepin building; something like that. I only know of one tunnel outside of this regular tunnel that is on the west boundary, on the Cape Horn claim. During the three years that I have been there there is only one time that I know of assessment work being done on the Cape Horn claim, but I know of work being done on the Golden Eagle. It may be possible that Mr. Cameron had intended the work done on the Golden Eagle to apply on the Cape Horn. I couldn't say as to that, but personally I only know of one time when I was there of any work being done on the Cape Horn, and that was done on the tunnel

that I speak of; there was some miners there did it; I don't know who they were working for. It wasn't either Mr. Pepin or Mr. Kroskop; I don't know who they were. They claimed that they were working [93] for Mr. Cameron. The other gentlemen, Mr. Pepin and Mr. Kroskop, may have done work that I did not see. I don't say that they did not.

Approved May 17th, 1917.

THOMAS A. FLYNN,
United States Attorney. [94]

In the District Court of the United States in and for the District of Arizona.

Having examined the above Statement of Evidence, I find the same to be true, complete and properly prepared and hereby approve the same.

Dated at Tucson, Arizona, this 18th day of May, A. D. 1917.

WM. H. SAWTELLE,
Judge, United States District Court for the District of Arizona.

[Endorsements]: E. 10 (Prescott). United States District Court, District of Arizona. United States of America, Plaintiff, vs. Ralph H. Cameron et al., Defendants. Statement of Evidence. Lodged in Clerk's office May 8, 1917, at —— M. Mose Drachman, Clerk. By R. E. L. Webb, Deputy. Filed May 19, 1917 at —— M. Mose Drachman, Clerk. By R. E. L. Webb, Deputy. [95]

In the United States District Court for the District of Arizona.

No. E. 10 (PRESCOTT).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH H. CAMERON et al.,

Defendants.

Certificate of Clerk of United States District Court to Transcript of Record.

United States of America,
District of Arizona,—ss.

I, Mose Drachman, Clerk of the United States District Court for the District of Arizona, do hereby certify that the ninety-five (95) typewritten pages, numbered one (1) to ninety-five (95), inclusive, is a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause as are necessary to the hearing of said cause, and as is stipulated for by counsel of record herein, as the same appear and remain of record on file in this office, and that the same constitute the record on appeal from the judgment of said United States District Court for the District of Arizona, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on be-

half [96] of the defendants for the preparation and certification of the typewritten transcript of record issued to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's fee (Sec. 828 R. S. U. S. as Amended by Sec. 6, Act of March 2, 1905), for making typewritten transcript of record—280 folios at 20¢ per folio	$56.00
Certificate of Clerk to typewritten transcript of record, 4 folios at 30¢	1.20
Seal to said Certificate	.40
Total	$57.60

I hereby certify that the above cost for preparing and certifying record, amounting to $57.60, has been paid to me by Joseph E. Morrison, Esquire, one of counsel for the defendants herein.

I further certify that I hereto attach and herewith transmit the original Citation and Plaintiff's Exhibits "A," "B," "C," "D," "E," "F," "G," "H," "I" and "J" in this cause.

WITNESS my hand and the seal of said District Court, affixed this 21st day of May, A. D. 1917, at Phoenix, Arizona.

[Seal] MOSE DRACHMAN,
Clerk.
By R. E. L. Webb,
Deputy Clerk. [97]

In the United States District Court for the District of Arizona.

E. 10—PRESCOTT.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL,

Defendants.

Citation on Appeal.

United States of America,—ss.

To the United States of America, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the 9th Circuit, to be held at the City of San Francisco, in the State of California, on the 2d day of May, 1917. Pursuant to an order allowing an appeal filed and entered in the clerk's office of the District Court of the United States for the district of Arizona from a final decree signed, filed, and entered on the 23d day of March, 1917, in that certain suit, being in equity No. 10, wherein Ralph H. Cameron, Niles J. Cameron, B. A. Cameron, S. D. Pepin, and L. L. Ferrall are defendants and appellants and you are plaintiff and appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in said order allowing appeal mentioned, should not be corrected and why justice should not be done to the parties in that behalf.

WITNESS the Honorable United States Circuit Judge for the 9th District, this 2d day of April, 1917, and of the Independence of the United States 141st.

WM. W. MORROW,
United States Circuit Judge for Ninth Circuit.

[98]

[Endorsed]: Case No. 10—In Equity. (Prescott). In the United States District Court, for the District of Arizona. United States of America, Plaintiff, vs. Ralph H. Cameron et al., Defendants. Citation on Appeal. Filed Apr. 7, 1917, at ——, M. Mose Drachman, Clerk. By R. E. L. Webb, Deputy.

Service acknowledged this 7th day of April, 1917.

THOMAS A. FLYNN,
Attorney for Plaintiff.[99]

[Endorsed]: No. 3001. United States Circuit Court of Appeals for the Ninth Circuit. Ralph H. Cameron, Niles J. Cameron, B. A. Cameron, S. D. Pepin, and L. L. Ferrall, Appellants, vs. The United States of America, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Arizona.

Filed May 23, 1917.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

Plaintiff's Exhibit "A."

COPY.

[Endorsed]: Plaintiff's Exhibit "A." U. S. vs. Cameron. No. E—10 (Prescott). Admitted and Filed Aug. 4, 1916. Mose Drachman, Clerk. By R. E. L. Webb, Dep.

(Grand Canyon Forest Reserve)

By the President of the United States of America.

A PROCLAMATION.

WHEREAS, it is provided by section twenty-four of the Act of Congress, approved March third, eighteen hundred and ninety-one, entitled, "An act to repeal timber-culture laws, and for other purposes." "That the President of the United States may, from time to time, set apart and reserve, in any State of Territory having public land bearing forests, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations, and the President shall, by public proclamation, declare the establishment of such reservations and the limits thereof";

And Whereas, the public lands in the Territory of Arizona, within the limits hereinafter described, are in part covered with timber, and it appears that the public good would be promoted by setting apart and reserving said lands as a public reservation;

Now, Therefore, I, BENJAMIN HARRISON, President of the United States, by virtue of the power in me vested by section twenty-four of the

aforesaid Act of Congress, do hereby make known and proclaim that there is hereby reserved from entry or settlement and set apart as a Public Reservation, all those certain tracts, pieces or parcels of land lying and being situate in the Territory of Arizona, and within the boundaries particularly described as follows, to wit:

Beginning at the point of intersection of the Parallel of thirty-six (36) degrees, thirty (30) minutes, North Latitude, with the Meridian of one hundred and eleven (111) degrees, forty-five (45) minutes, of Longitude West from Greenwich; thence westerly along said parallel of latitude to its intersection with the Meridian of one hundred and twelve (112) degrees, forty-five (45) minutes, West Longitude; thence southerly along said meridian of longitude to its intersection with the Parallel of thirty-five (35) degrees, forty-five (45) minutes, North Latitude; thence easterly along said parallel of latitude to its intersection with the Meridian of one hundred and eleven (111) degres, forty-five (45) minutes, West Longitude; thence northerly along said meridian of longitude to its intersection with the Parallel of thirty-six (36) degrees, thirty (30) minutes, North Latitude, the place of beginning.

Excepting from the force and effect of this proclamation all lands which may have been, prior to the date hereof, embraced in any legal entry or covered by any lawful filing duly of record in the proper United States Land Office, or upon which any valid settlement has been made pursuant to law, and the

statutory period within which to make entry or filing of record has not expired; and all mining claims duly located and held according to the laws of the United States and rules and regulations not to conflict therewith;

Provided that this exception shall not continue to apply to any particular tract of land unless the entryman, settler or claimant continues to comply with the law under which the entry, filing, settlement or location was made.

Warning is hereby expressly given to all persons not to enter or make settlement upon the tract of land reserved by this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington, this twentieth day of February, in the year of our Lord, one thousand, eight hundred and ninety-three, and of the Independence of the United States the one hundred and seventeenth.

(Signed) BENJ. HARRISON.

By the President:

(Signed) JOHN W. FOSTER,
Secretary of State.

COPY.

THE GRAND CANON FOREST RESERVE.

ARIZONA.

(Second Proclamation.)

By the President of the United States of America.

A PROCLAMATION.

WHEREAS, The Grand Canon Forest Reserve, in the Territory of Arizona, was established by proclamation dated February twentieth, eighteen hundred and ninety-three, under and by virtue of section twenty-four of the Act of Congress, approved March third, eighteen hundred and ninety-one, entitled, "An act to repeal timber-culture laws, and for other purposes," which provides, "That the President of the United States may, from time to time, set apart and reserve, in any State or Territory having public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations, and the President shall, by public proclamation, declare the establishment of such reservations and the limits thereof";

And whereas, it is further provided by the Act of Congress, approved June fourth, eighteen hundred and ninety-seven, entitled, "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," that "The President is hereby authorized at any time to modify any Executive order that has been or may hereafter be made establishing any forest reserve, and by such modification may reduce the

area or change the boundary lines of such reserve, or may vacate altogether any order creating such reserve";

Now, therefore, I, Theodore Roosevelt, President of the United States, by virtue of the power vested in me by the aforesaid act of Congress, approved June fourth, eighteen hundred and ninety-seven, do hereby make known and proclaim that there is hereby reserved from entry or settlement, and added to and made a part of the aforesaid Grand Canyon Forest Reserve, all those certain tracts, pieces or parcels of land lying and being situate in the Territory of Arizona and within the boundaries particularly described as follows:

Beginning at the point where the range line between Ranges four (4) and four and one-half (4½) West, Salt Lake Meridian, intersects the boundary line between the State of Utah and the Territory of Arizona; thence due south twelve (12) miles; thence due west four (4) miles; thence due south six (6) miles; thence due west eight (8) miles; thence due south to the center of the stream bed of Snake Gulch; thence in a westerly direction along the centre of the stream bed of said Gulch to its intersection with Kanab Creek; thence in a general southerly direction along the middle channel of said creek to its intersection with the north boundary of The Grand Canon Forest Reserve; thence easterly along said boundary thirty-eight (38) miles; thence due north seven (7) miles; thence due west two (2) miles; thence due north four (4) miles; thence due west two (2) miles; thence due north five (5) miles;

thence due west one (1) mile; thence due north twelve (12) miles; thence due east one (1) mile; thence due north to the boundary line between the State of Utah and the Territory of Arizona; thence westerly along said boundary line to its intersection with the range line between Ranges four (4) and four and one-half (4½) West, Salt Lake Meridian, the place of beginning;

Excepting from the force and effect of this proclamation all lands which may have been, prior to the date hereof, embraced in any legal entry or covered by any lawful filing duly of record in the proper United States Land Office, or upon which any valid settlement has been made pursuant to law, and the statutory period within which to make entry or filing of record has not expired: Provided, that this exception shall not continue to apply to any particular tract of land unless the entryman, settler or claimant continues to comply with the law under which the entry, filing or settlement was made.

Warning is hereby expressly given to all persons not to make settlement upon the tract of land reserved by this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 6th day of May, in the year of our Lord one thousand, nine hundred and five, and of the Independence of the United

States the one hundred and twenty-ninth.

[Seal] (Signed) THEODORE ROOSEVELT,

By the President:

(Signed) FRANCIS B. LOOMIS,
Acting Secretary of State.

GRAND CANYON FOREST RESERVE. ARIZONA. (THIRD PROCLAMATION.)

By the President of the United States of America.

A PROCLAMATION.

WHEREAS, the Grand Canyon Forest Reserve, in the Territory of Arizona, was established by proclamation dated February twentieth, eighteen hundred and ninety-three, under the name of the Grand Cañon Forest Reserve, and was enlarged, by proclamation dated May sixth, nineteen hundred and five, to include additional lands in the Territory of Arizona;

And whereas, it appears that the public good would be promoted by further adding to the said forest reserve certain lands, in the Territory of Arizona, which are in part covered with timber, and by excluding therefrom certain lands;

Now, therefore, I, THEODORE ROOSEVELT, President of the United States of America, by virtue of the power in me vested by the Act of Congress, approved June fourth, eighteen hundred and ninety-seven, entitled, "An Act Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," do pro-

claim that the boundaries of the aforesaid Grand Canyon Forest Reserve are hereby further changed and that they are now as shown on the diagram forming a part hereof.

This proclamation will not take effect upon any lands withdrawn or reserved, at this date, from settlement, entry, or other appropriation, for any purpose other than forest uses, or which may be covered by any prior valid claim, so long as the withdrawal, reservation, or claim exists.

The lands hereby excluded from the reserve and restored to the public domain shall be open to settlement from the date hereof, but shall not be subject to entry, filing, or selection until after ninety days' notice by such publication as the Secretary of the Interior may prescribe.

Warning is hereby given to all persons not to make settlement upon the lands reserved by this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

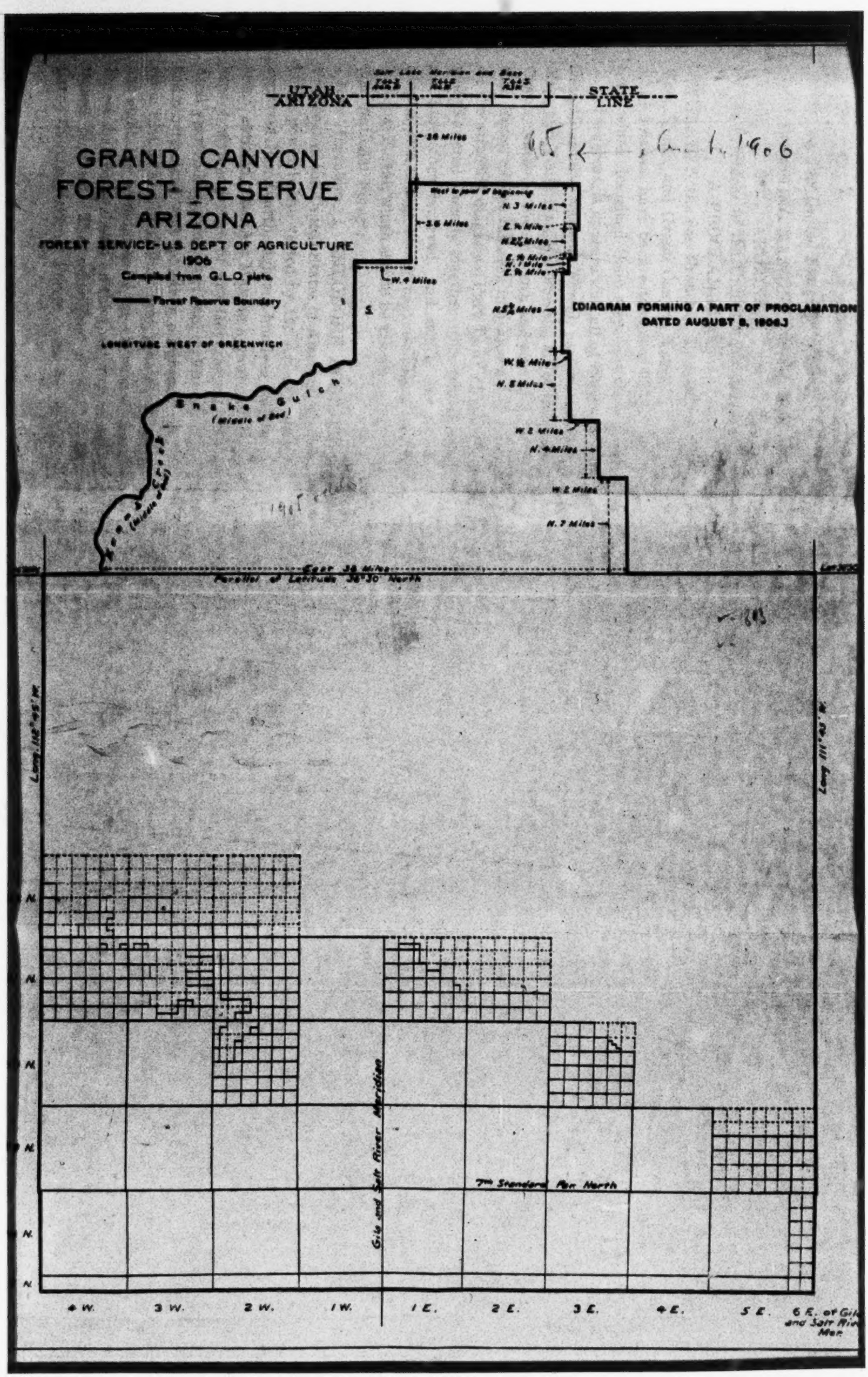
Done at the City of Washington this 8th day of August, in the year of our Lord one thousand nine hundred and six, and of the Independence of the United States the one hundred and thirty-first.

[Seal] THEODORE ROOSEVELT,

By the President:

ALVEY A. ADEE,

Acting Secretary of State.


UTAH
ARIZONA
STATE
LINE
GRAND CANYON
FOREST RESERVE
ARIZONA
FOREST SERVICE-U.S. DEPT OF AGRICULTURE
1906
Compiled from G.L.O. plats.
Forest Reserve Boundary
LONGITUDE WEST OF GREENWICH
[DIAGRAM FORMING A PART OF PROCLAMATION
DATED AUGUST 8, 1906.]
38 Miles
3.6 Miles
W. 4 Miles
N. 3 Miles
E. ¼ Mile
E. ¼ Mile
E. ¼ Mile
N. 5½ Miles
W. ½ Mile
N. 5 Miles
W. 2 Miles
N. 4 Miles
W. 2 Miles
N. 7 Miles
Snake Gulch
(Middle of Bed)
East 38 Miles
Parallel of Latitude 36°30' North
Long. 112°45' W.
Long. 111°45' W.
Gila and Salt River Meridian
7th Standard Par. North
4 W.
3 W.
2 W.
1 W.
1 E.
2 E.
3 E.
4 E.
5 E.
6 E. of Gila and Salt River Mer.

COCONINO NATIONAL FOREST.
ARIZONA.

By the President of the United States of America.

A PROCLAMATION.

WHEREAS, the San Francisco Mountains, Black Mesa, Tonto, and Grand Canyon National Forests, all in Arizona, have been established by proclamations which described their respective boundaries;

And whereas, it appears that all of the San Francisco Mountains National Forest, parts of the Black Mesa and Tonto National Forests, all of the Grand Canyon National Forest south and east of the Colorado River, except the area indicated as eliminated on the attached diagram (Part Two) of the Coconino National Forest, together with certain lands not heretofore reserved, and which are in part covered with timber, should be consolidated into one National Forest, which should be known as the Coconino National Forest;

Now, therefore, I, THEODORE ROOSEVELT, President of the United States of America, by virtue of the power in me vested by the Act of Congress, approved June fourth, eighteen hundred and ninety-seven, entitled, "An Act Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," do proclaim that on and after July first, nineteen hundred and eight, the boundaries of the Coconino National Forest shall be as shown on the two parts of the attached diagram. The remaining portion of the Grand Canyon National Forest, with the exception

of the eliminated area, shall continue reserved and constitute the Kaibab National Forest. All that portion of the Black Mesa National Forest not included in the Coconino National Forest (Part One of Diagram) has, by Executive Orders, been included in the Sitgreaves, Apache, and Tonto National Forests.

The withdrawal made by this proclamation shall, as to all lands which are at this date legally appropriated under the public land laws or reserved for any public purpose, be subject to and shall not interfere with or defeat legal rights under such appropriation nor prevent the use for such public purpose of lands so reserved, so long as such appropriation is legally maintained, or such reservation remains in force.

It is not intended by this proclamation to modify the proclamations heretofore issued establishing the Grand Canyon National Game Preserve and the Grand Canyon National Monument, both of which include land embraced in the boundaries of the Coconino National Forest.

The portions of the Grand Canyon National Forest indicated on the attached diagram (Part Two) of the Coconino National Forest as eliminated which are not embraced in withdrawals for administrative sites for use in the management of the Forest, or in any other reservation, or appropriation, shall be restored to the public domain and become subject to settlement under the general provisions of the homestead laws on such date and after such notice by publication as the Secretary of

the Interior may prescribe, but shall not become subject to entry, filing, selection, or other form of appropriation until the expiration of thirty days from the date so fixed, and no person will be permitted to gain or exercise any right whatever under any settlement or occupation begun prior to such date, and all such settlement and occupation are hereby forbidden.

This proclamation shall not prevent the settlement and entry of any lands heretofore opened to settlement and entry under the Act of Congress approved June eleventh, nineteen hundred and six, entitled, "An Act to provide for the entry of Agricultural lands within forest reserves."

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 2 day of July, in the year of our Lord one thousand nine hundred and eight, and of the Independence of the United States the one hundred and thirty-second.

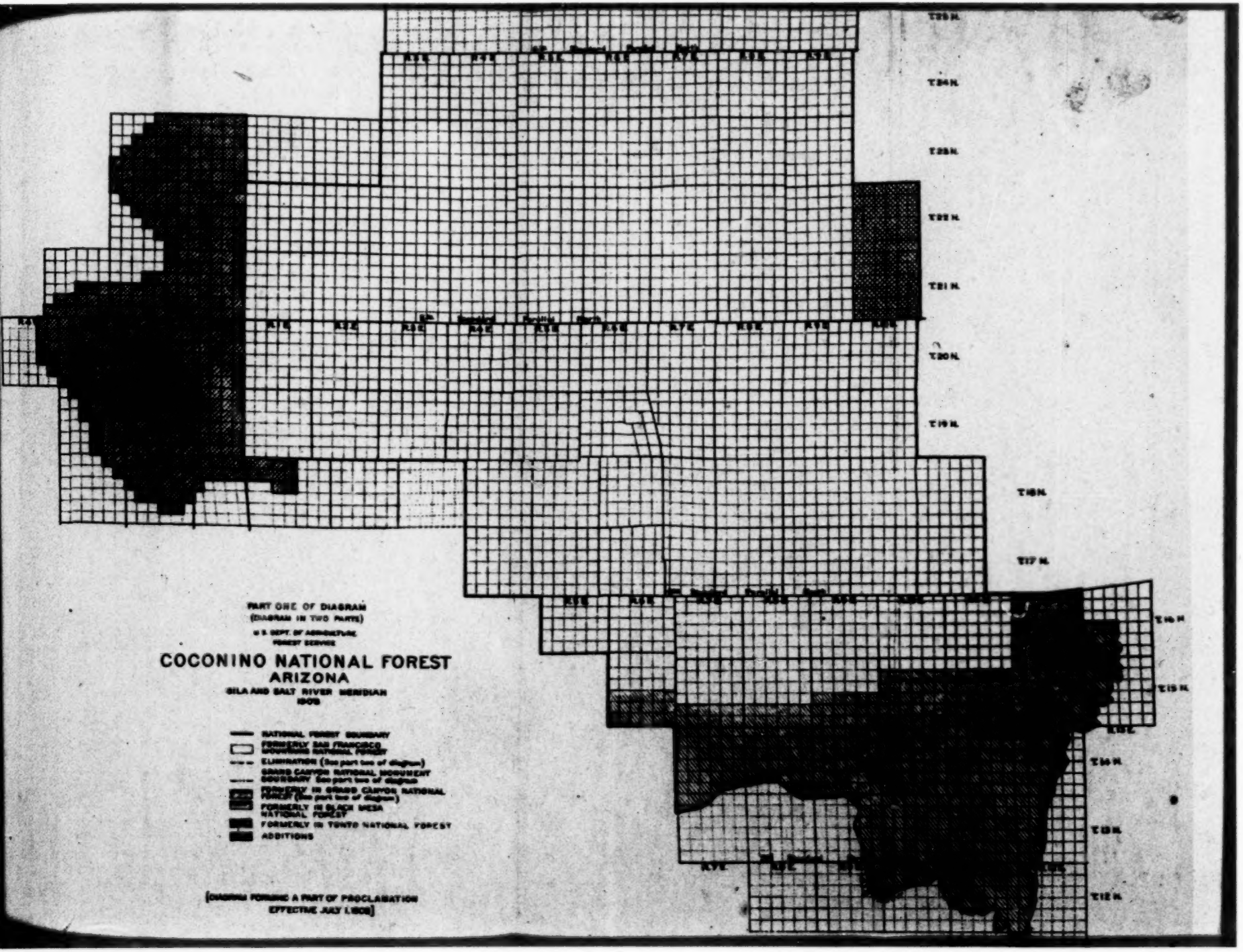
[Seal] THEODORE ROOSEVELT,

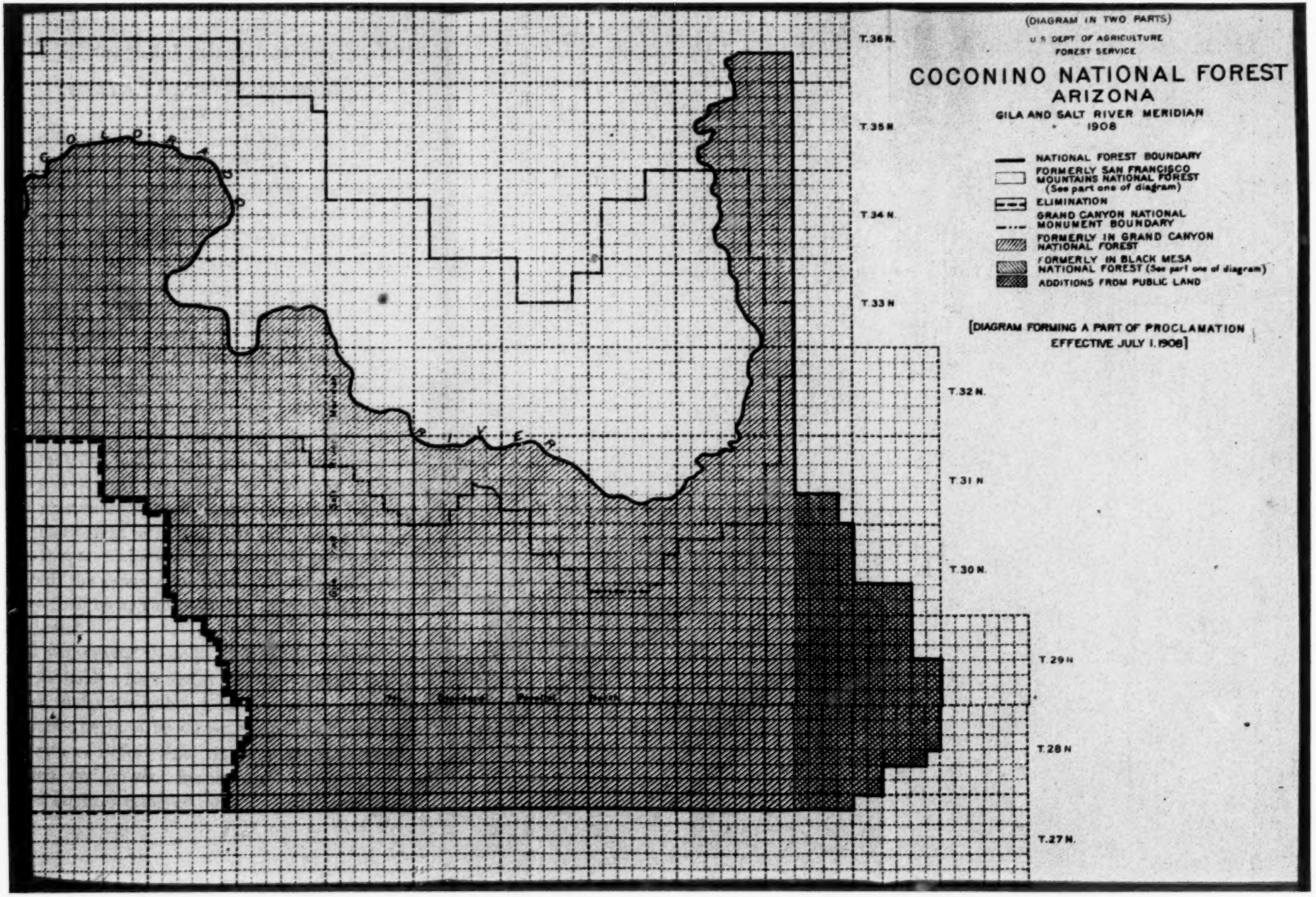
By the President:

ROBERT BACON,

Acting Secretary of State.

[No. 818.]


PART ONE OF DIAGRAM
(DIAGRAM IN TWO PARTS)
U.S. DEPT. OF AGRICULTURE
FOREST SERVICE
COCONINO NATIONAL FOREST
ARIZONA
GILA AND SALT RIVER MERIDIAN
1908
NATIONAL FOREST BOUNDARY
FORMERLY SAN FRANCISCO MOUNTAINS NATIONAL FOREST
ELIMINATION (See part two of diagram)
GRAND CANYON NATIONAL MONUMENT BOUNDARY (See part two of diagram)
FORMERLY IN GRAND CANYON NATIONAL FOREST (See part two of diagram)
FORMERLY IN BLACK MESA NATIONAL FOREST
FORMERLY IN TONTO NATIONAL FOREST
ADDITIONS
[DIAGRAM FORMING A PART OF PROCLAMATION
EFFECTIVE JULY 1 1908]


(DIAGRAM IN TWO PARTS)
U.S. DEPT OF AGRICULTURE
FOREST SERVICE
COCONINO NATIONAL FOREST
ARIZONA
GILA AND SALT RIVER MERIDIAN
1908
NATIONAL FOREST BOUNDARY
FORMERLY SAN FRANCISCO MOUNTAINS NATIONAL FOREST (See part one of diagram)
ELIMINATION
GRAND CANYON NATIONAL MONUMENT BOUNDARY
FORMERLY IN GRAND CANYON NATIONAL FOREST
FORMERLY IN BLACK MESA NATIONAL FOREST (See part one of diagram)
ADDITIONS FROM PUBLIC LAND
[DIAGRAM FORMING A PART OF PROCLAMATION EFFECTIVE JULY 1, 1908]
T.36 N.
T.35 N.
T.34 N.
T.33 N.
T.32 N.
T.31 N.
T.30 N.
T.29 N.
T.28 N.
T.27 N.
COLORADO
RIVER
Flagstaff
Prescott
Phoenix
Tucson

TUSAYAN NATIONAL FOREST.
ARIZONA.

By the President of the United States of America.

A PROCLAMATION.

WHEREAS, it appears desirable that certain lands heretofore reserved and proclaimed as portions of the Coconino National Forest, together with certain other lands within the Territory of Arizona not heretofore reserved, which are in part covered with timber or undergrowth, should constitute the Tusayan National Forest;

Now, therefore, I, WILLIAM H. TAFT, President of the United States of America, by virtue of the power in me vested by the Act of Congress approved June fourth, eighteen hundred and ninety-seven, entitled "An Act Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," do proclaim that on and after July first, nineteen hundred and ten, the boundaries of the Tusayan National Forest shall be as shown on the diagram forming a part hereof.

The withdrawal made by this proclamation shall, as to all lands which are at this date legally appropriated under the public land laws or reserved for any public purpose, be subject to and shall not interfere with or defeat legal rights under such appropriation, nor prevent the use for such public purpose of lands so reserved, so long as such appropria-

tion is legally maintained or such reservation remains in force.

It is not intended by this proclamation to modify the proclamations heretofore issued establishing the Grand Canyon National Game Preserve and the Grand Canyon National Monument, both of which include land embraced in the boundaries of the Tusayan National Forest.

This proclamation shall not prevent the settlement and entry of any lands heretofore opened to settlement and entry under the Act of Congress approved June eleventh, nineteen hundred and six, entitled "An Act to provide for the entry of Agricultural lands within forest reserves."

The eliminations from the Coconino National Forest shown on the two parts of the attached diagram which are not embraced in withdrawals for administrative sites for use in the management of the Tusayan National Forest, or in any other reservation or appropriation shall be restored to the public domain as provided in the proclamation of this date modifying the boundaries of the Coconino National Forest.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this twenty-eighth day of June, in the year of our Lord one thousand nine hundred and ten, and of the Independence

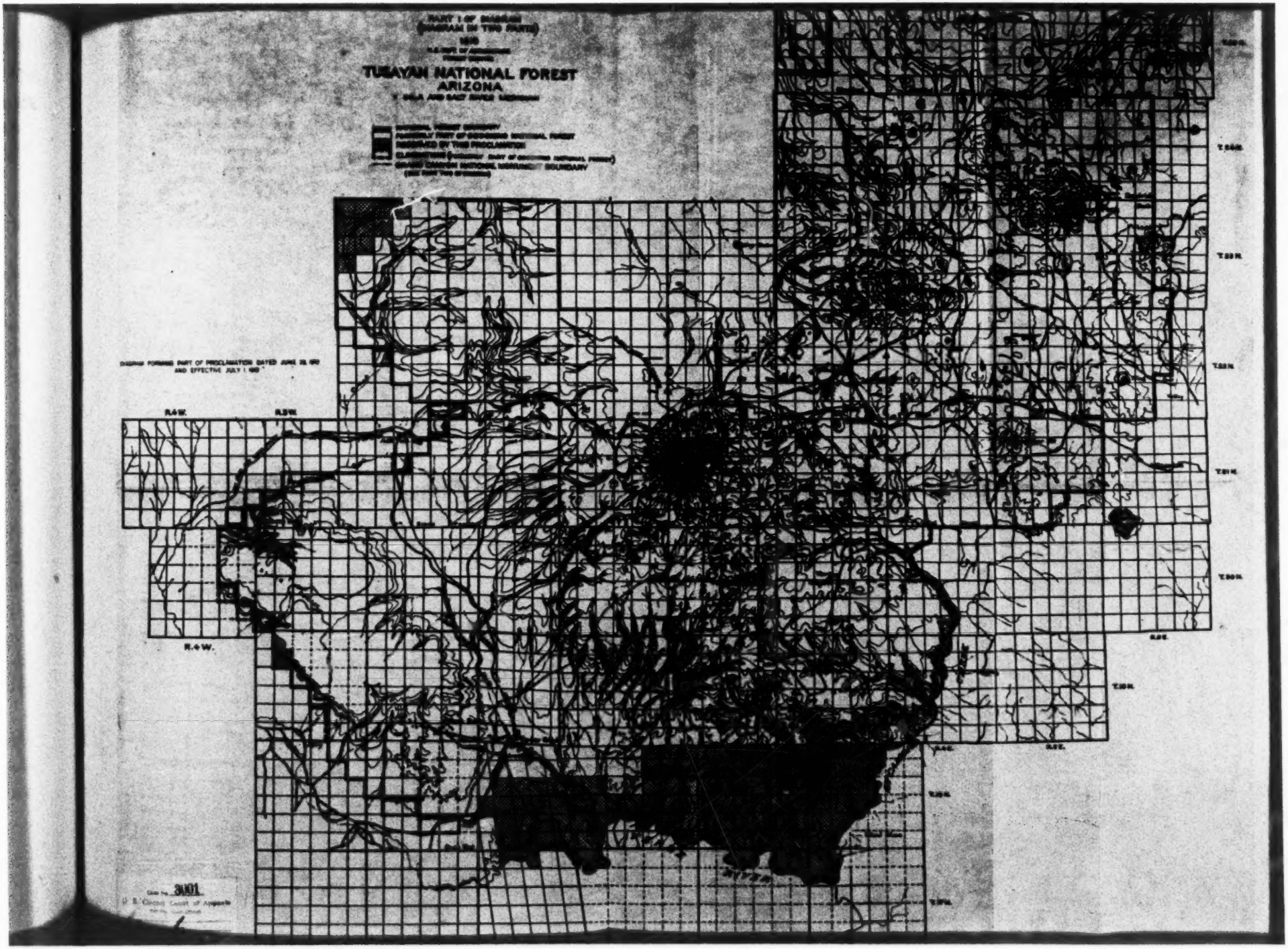
of the United States the one hundred and thirty-fourth.

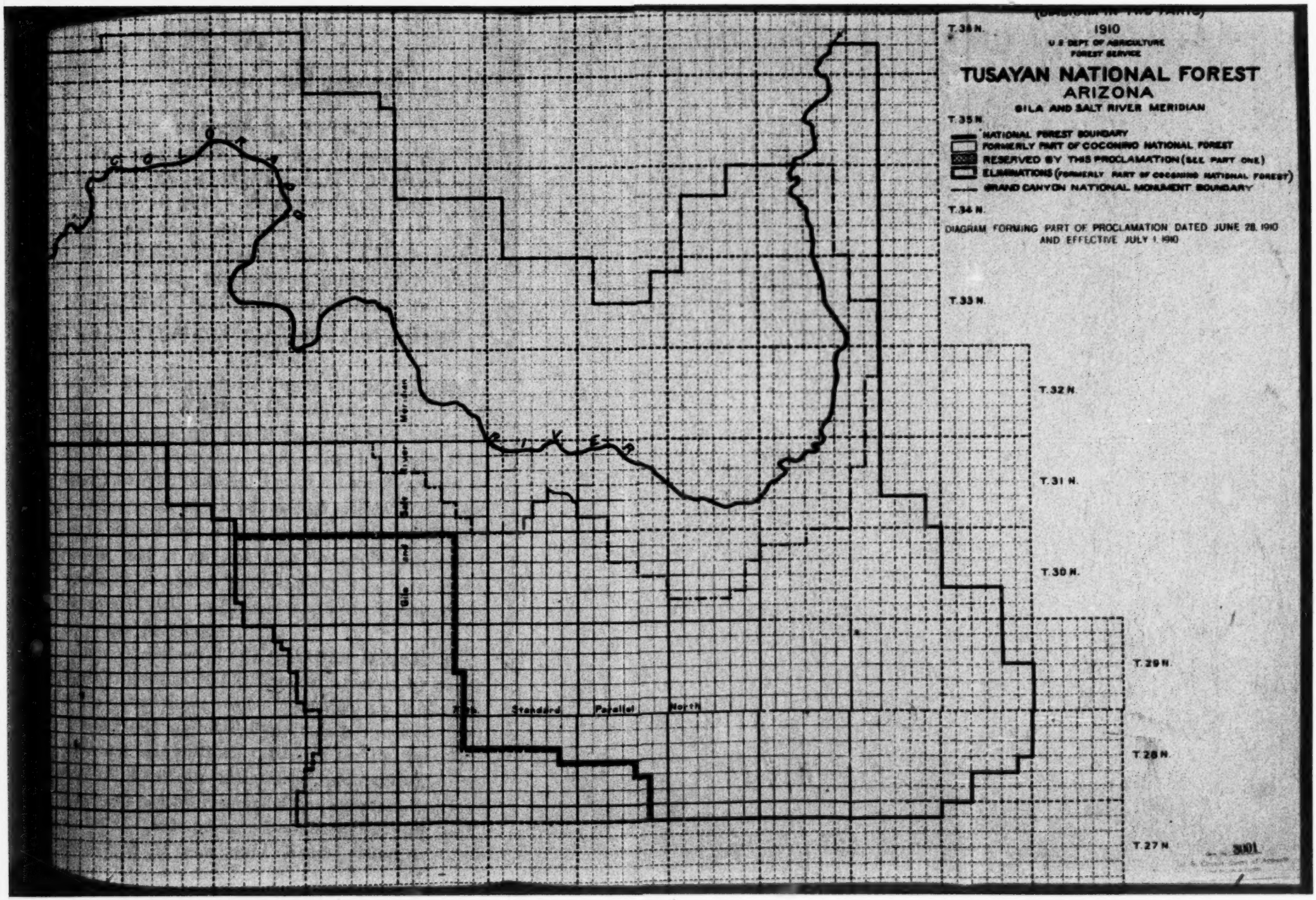
[Seal] WM. H. TAFT.

By the President:

HUNTINGTON WILSON,
Acting Secretary of State.

[No. 1049.]


PART 1 OF DIAGRAM
(DIAGRAM IN TWO PARTS)
TUSAYAN NATIONAL FOREST
ARIZONA
DIAGRAM FORMING PART OF PROCLAMATION DATED JUNE 28, 1910
AND EFFECTIVE JULY 1, 1910
R.4 W.
R.3 W.
R.4 W.
T.30 N.
T.29 N.
T.28 N.
T.27 N.
T.26 N.
T.25 N.
T.24 N.
R.2 E.
R.3 E.
3101


1910
U.S. DEPT. OF AGRICULTURE
FOREST SERVICE
TUSAYAN NATIONAL FOREST
ARIZONA
GILA AND SALT RIVER MERIDIAN
NATIONAL FOREST BOUNDARY
FORMERLY PART OF COCONINO NATIONAL FOREST
RESERVED BY THIS PROCLAMATION (SEE PART ONE)
ELIMINATIONS (FORMERLY PART OF COCONINO NATIONAL FOREST)
GRAND CANYON NATIONAL MONUMENT BOUNDARY
DIAGRAM FORMING PART OF PROCLAMATION DATED JUNE 28, 1910
AND EFFECTIVE JULY 1, 1910
T. 38 N.
T. 35 N.
T. 34 N.
T. 33 N.
T. 32 N.
T. 31 N.
T. 30 N.
T. 29 N.
T. 28 N.
T. 27 N.
Gila and Salt River Meridian
Base Standard Parallel North
3001

Plaintiff's Exhibit "B."

[Endorsed]: Plffs. Ex. "B." Case of U. S. vs. Cameron. No. E–10 (Prescott). Admitted and filed Aug. 4, 1916. Mose Drachman, Clerk. By R. E. L. Webb, Deputy.

No. 3001. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit "B." Filed May 23, 1917. F. D. Monckton, Clerk.

GRAND CANYON NATIONAL MONUMENT.
ARIZONA.

By the President of the United States of America.
A PROCLAMATION.

WHEREAS, the Grand Canyon of the Colorado River, which is situated upon public land within the Grand Canyon National Forest, in the Territory of Arizona, is an object of unusual scientific interest, being the greatest eroded canyon within the United States, and it appears that the public interests would be promoted by reserving it as a National Monument, with such other land as is necessary for its proper protection;

Now, therefore, I, THEODORE ROOSEVELT, President of the United States of America, by virtue of the power in me vested by section two of the Act of Congress, approved June eighth, nineteen hundred and six, entitled, "An Act for the preservation of American antiquities," do proclaim that there are hereby reserved from appropriation and use of all kinds under all of the public land laws, subject to all prior valid adverse claims, and set

apart as a National Monument, all the tracts of land, in the Territory of Arizona, shown as the Grand Canyon National Monument on the diagram forming a part hereof.

The reservation made by this proclamation is not intended to prevent the use of the lands for forest purposes under the proclamation establishing the Grand Canyon National Forest, but the two reservations shall both be effective on the land withdrawn, but the National Monument hereby established shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure or destroy any feature of this National Monument or to locate or settle upon any of the lands reserved by this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 11th day of January, in the year of our Lord one thousand nine hundred and eight, and of the Independence of the United States the one hundred and thirty-second.

[Seal] THEODORE ROOSEVELT.

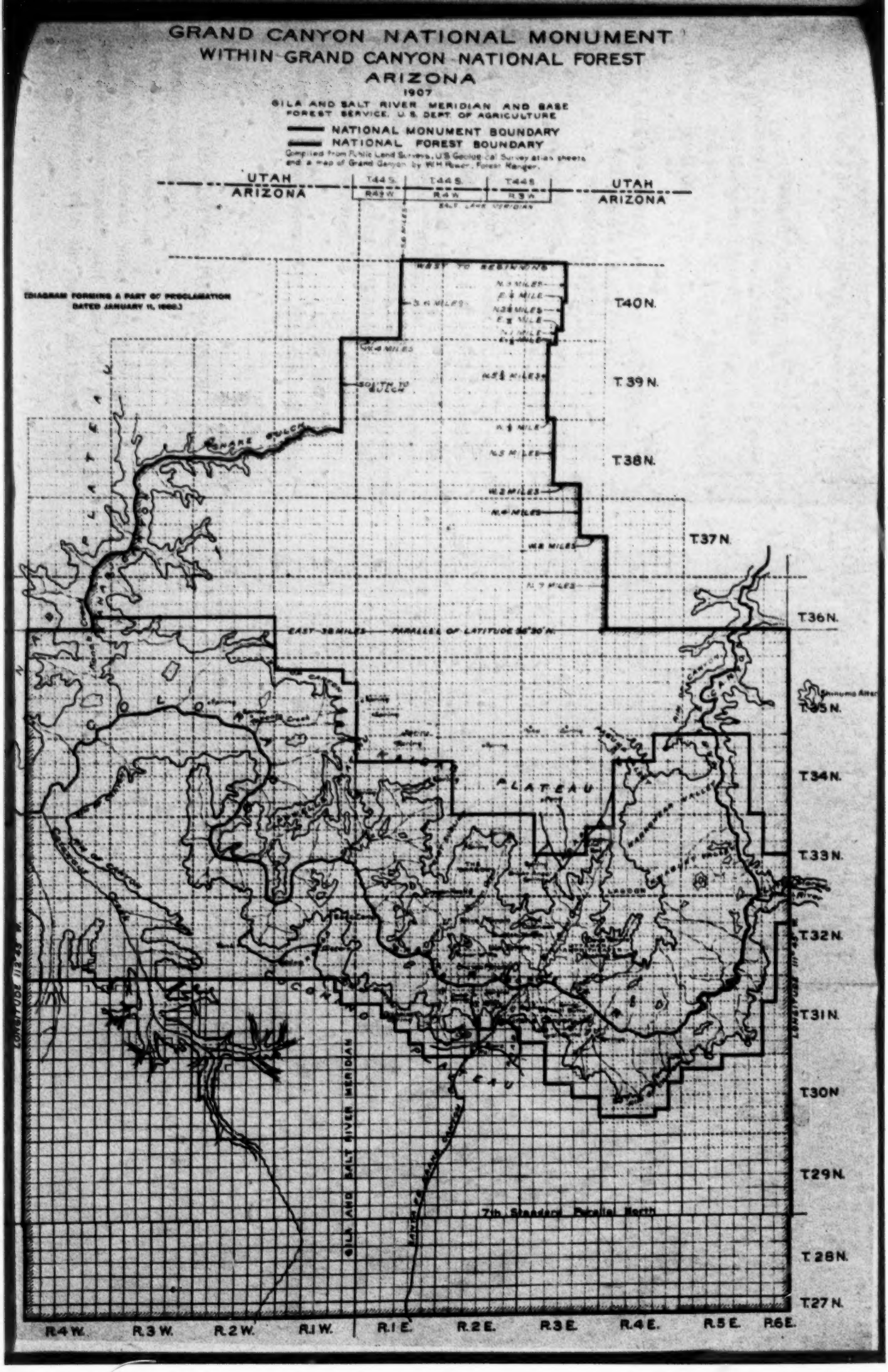
By the President:

ELIHU ROOT,

Secretary of State.

[No. 794.]

WITHIN GRAND CANYON NATIONAL MONUMENT


GRAND CANYON NATIONAL MONUMENT
WITHIN GRAND CANYON NATIONAL FOREST
ARIZONA
1907
GILA AND SALT RIVER MERIDIAN AND BASE
FOREST SERVICE, U.S. DEPT. OF AGRICULTURE
NATIONAL MONUMENT BOUNDARY
NATIONAL FOREST BOUNDARY
Compiled from Public Land Surveys, U.S. Geological Survey atlas sheets and a map of Grand Canyon by W.H. Rieger, Forest Ranger.
UTAH
ARIZONA
T44S.
R4W
R3W
R2W
SALT LAKE MERIDIAN
UTAH
ARIZONA
DIAGRAM FORMING A PART OF PROCLAMATION DATED JANUARY 11, 1908.)
T40N.
T39N.
T38N.
T37N.
T36N.
T35N.
T34N.
T33N.
T32N.
T31N.
T30N
T29N.
T28N.
T27N.
EAST-38 MILES—PARALLEL OF LATITUDE 36°30' N.
PLATEAU
GILA AND SALT RIVER MERIDIAN
7th Standard Parallel North
R4W.
R3W.
R2W.
R1W.
R1E.
R2E.
R3E.
R4E.
R5E.
R6E.

Plaintiff's Exhibit "C."

[Endorsed]: Plaintiff's Exhibit "C." Case of U. S. vs. Cameron. No. E–10 (Prescott). Admitted and filed Aug. 4, 1916. Mose Drachman, Clerk. By R. E. L. Webb, Deputy.

4—207.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C.

Mar. 16, 1916.

"B."

CRGD.

I hereby certify that the annexed copy of application of patent, is a true and literal exemplification from the original which is on file in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal] C. M. BRUCE,
Assistant Commissioner of the General Land Office.

acb—1 fs
28—05217

05217.

APPLICATION FOR PATENT.

Territory of Arizona,
County of Coconino,—ss.

Ralph H. Cameron, being first duly sworn according to law deposes and says; that by virtue of a compliance with the terms of Chapter VI,

Title XXXII, of the Revised Statutes of the United States and of the laws of the Territory of Arizona, he is the owner of and in the undisputed possession of the gold, silver and copper bearing Golden Eagle and Cape Horn Lode Mining Claims, United States Mineral Surveys Nos. 2022 & 2023, situate in the unorganized mining district, County of Coconino, and Territory of Arizona; that said Golden Eagle & Cape Horn claims were duly located as shown by the certified copies of location certificates accompanying the abstract of title herewith filed; that the improvements upon and for the development and benefit of said claims made by the present owner amount to more than $500 for each of said lode claims; that by virtue of compliance with law as aforesaid, he is entitled to a patent from the United States for the said Golden Eagle & Cape Horn Lode claims, and application is hereby made therefor.

RALPH H. CAMERON.

Subscribed and sworn to before me this 17 day of May, 1905.

H. C. HIBBEN,
Notary Public.

My Commission Expires Dec. 16–1906.

No. 3001. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit "C." Filed May 23, 1917. F. D. Monckton, Clerk.

Plaintiff's Exhibit "D."

[Endorsed]: Plaintiff's Exhibit "D." Case of U. S. vs. Cameron. No. E–10 (Prescott). Admitted and filed Aug. 4, 1916. Mose Drachman, Clerk. By R. E. L. Webb, Dep.

4—207.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C.

Mar. 16, 1916.

"B."
CRGD.

I hereby certify that the annexed copy of departmental decision of February 11, 1909, is a true and literal exemplification from the original which is on file in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal] C. M. BRUCE,
Assistant Commissioner of the General Land Office.

05216

acb—1 fs
E. P. F. H. B. 2
LHM—E. B. C.
E. B. C.
F. W. T.

No. 17368.
Registered G.L.O. Feb. 1, 1909.
Referred to .....

Assigned to .....
Answered by .....
D – 70
36–713
35–618
..... Noted .....
File
GWW
Received G. L. O. Feb. 15, 1909.

DEPARTMENT OF THE INTERIOR,
WASHINGTON.

February 11, 1909.

Appeal—Affirmed
Applications for patent rejected.
Contests 2049 and 2112.
"N"

GRAND CANYON RAILWAY COMPANY
v.
RALPH H. CAMERON.

The Commissioner of the General Land Office.

Sir:

The record now before the Department in the case of the Grand Canyon Railway Company against Ralph H. Cameron involves protest proceedings on behalf of the Railway Company against three applications for mineral patents, Nos. 714, 715 and 716, Prescott (now Phoenix), Arizona, land district, all of which were filed by Ralph H. Cameron in May, 1905, for certain lode mining claims and millsites situated along the Bright Angel Trail, and

05215, 05216
05217

at that time within the Grand Canyon National Forest. These applications have heretofore received departmental consideration; the first two in the decision rendered April 9, 1907 (35 L. D., 495), and the last in the decision of August 21, 1907 (36 L. D., 66).

acb—2 fs

Separate proceedings were initiated against each application but, inasmuch as the issues involved are identical and the record of the last hearing relates to all the applications, they will be considered and disposed of together.

The record shows that the application No. 714 embraces the Magician lode mining claim and the Alder millsite, survey No. 2014 A and B. Application No. 715 is for the Wizard lode claim and the Willow millsite, survey No. 2015 A and B. Application No. 716 includes the Golden Eagle and Cape Horn lode locations, survey Nos. 2022 and 2023, respectively. The two claims last mentioned were located by Cameron April 10, 1902, and the amended locations were made February 23, 1904. These claims lie upon and along the southerly edge or rim of the Grand Canyon, inclose the head of the Bright Angel trail, and involve a conflict with the railway company's station grounds and right of way. The other four claims were located by Cameron June 15, 1904. The millsites are adjoining and situated below the rim of the Canyon at the Indian Gardens, part way down to the Colorado River, and are traversed by the trail. The Magician claim is still farther down and at the locality known as the

"Devil's Corkscrew," a precipitous and tortuous portion of the trail. The north end of the Wizard claim abuts on the Colorado River, and lies longitudinally along Pipe Creek, down which the trail

acb—3 fs

passes in order to reach the river.

It appears that the Bright Angel Trail was located and that the work of construction was in progress, January 31, 1891, by Cameron, Peter D. Berry, and others, and that on February 3, 1891, Berry caused to be filed and recorded in the County Records a certificate and plat showing the location of the trail, and designating it as the Bright Angel Toll Road, pursuant to the Territorial statutes relating to the construction of toll roads. Cameron, as assignee of the original constructors and owners of the trail, has been in possession thereof, and has asserted the right and franchise under the local statutes and under authorization from the County Board of Supervisors to control the trail and collect tolls thereon.

The Grand Canyon Forest Reserve (National Forest) was created by the proclamation of February 20, 1893 (27 Stat., 1064), pursuant to Section 24 of the Act of March 3, 1891 (26 Stat., 1103).

The railway company, under the grant contained in the Act of May 18, 1898 (30 Stat., 418), giving to its predecessor a right of way through the reserve, prior to the location of the mining claims here in question, constructed and operated its railroad to, and surveyed and occupied its station grounds at,

acb—4 fs

the Grand Canyon.

Against application No. 716 for the Golden Eagle and Cape Horn claims, the company filed a so-called "adverse claim and protest," wherein it was alleged, among other things, that the claims were upon non-mineral land; that the expenditures were insufficient for patent purposes; and that the notice of application for patent did not comply with the requirements of the statute, and a suit was timely instituted under such "adverse claim." It was held by the Department (35 L. D., 495), *supra,* that the so-called "adverse claim" was not a proper subject for adverse proceedings, but that the allegations contained therein might be treated as a protest; and thereupon the case was remanded, with directions that the company be afforded opportunity to apply for a hearing in the usual manner.

Against applications Nos. 714 and 715 the company filed protests and a hearing was had. The local officers found in favor of the applicant. The company appealed, and your office decided that the applications for patent must be held for rejection. Cameron appealed. The Department (36 L. D., 66), *supra,* affirmed the action below upon the question of the sufficiency of the patent notices involved and the denial of the company's motion to dismiss the applications, but, because certain offered evidence was improperly rejected, the record was remanded, with directions that the local officers—reopen the

hearing and admit the evidence formerly offered by the company, and refused by them. They will also admit any and all evidence that may be offered by

either party, or by the Government, in relation to Cameron's purpose, past, present, or future, as touching the claims here in question, or any other claims located or claimed by him embracing portions of or lying near to said Bright Angel Trail, including evidence intended to show the uses to which any or all of such claims have been applied. Any further evidence that may be offered by either party, or by the Government, bearing upon any of the other questions raised by the record and not herein finally passed upon will likewise be admitted.

* * * When the taking of testimony shall be completed they will forthwith forward the entire record to your office to be by you transmitted to this Department, with such recommendations as you may desire to make, if any. The whole matter will then be considered and disposed of here, where such briefs or arguments as counsel for either party may wish to submit may be filed. * * *

For a more complete account of these preliminary matters and proceedings reference is had to the text of the reported decisions above mentioned.

The local officers set the hearings ordered by the Department for the same time in the interest of expedition and for the convenience of the parties and their witnesses. This action was expressly sanctioned by your office instructions of January 15, 1908, wherein it was stated, in part, that the departmental decision of August 21, 1907 (36 L. D., 66), contemplated but one hearing at which evidence might be offered as to all of Cameron's claims on or near the Bright Angel Trail, and that a separate

hearing should not be had as to application No. 716,

acb—6 fs.

irrespective of the question as to whether the company's protest was still pending or not.

From this holding of your office the applicant has filed an appeal, and contends that the railway company made default by failing to apply for a hearing, and should not be heard as to application No. 716 at this time.

It is not disclosed by the record that the company did in fact formally apply for a hearing as to that application although served, May 31, 1907, with a copy of the departmental decision of April 9, 1907 (35 L. D., 495).

The parties, with their counsel and witnesses, were present on the day set for hearing, January 20, 1908, and it was stipulated that evidence with reference to the three applications should be taken at the same time and considered in the matter of each application so far as applicable, subject to all objections as to materiality or admissibility. The company objected to the introduction of any evidence as to application No. 716, on the ground that its suit against Cameron, in support of its "adverse claim and protest," was still pending, undetermined. The applicant objected to a hearing on that application, on the ground that the company had failed to file any notice (application?) for a hearing as required, and on the further ground that in an action to quiet title, a final judgment in favor of Cameron had been rendered in

acb—7 fs.

a suit involving all the matters now at issue before

the land department, which decision and judgment of the court, it was asserted, is binding upon the Department.

The above objections are not well taken. The company's so-called "adverse claim" was dismissed, and the pendency of the company's suit presented no bar to the hearing. The findings and judgment of the court in Cameron's suit to quiet title as against the company are not binding upon the land department, that action not being an adverse suit.

The mere negligence of the company in failing to apply for a hearing, if such be a fact, will not be allowed to preclude the Department from examining the evidence as to the questions of the character of the land, the applicant's good faith, and his compliance with law in the premises. Such matters were fully gone into by both parties in their evidence, and, furthermore, the Government is a party in interest. It also appears that the parties understood and consented that a hearing upon application No. 716 should be had for the reason that the register, on August 29, 1907, reported that, by agreement of the parties in interest, the case had been deferred until the fall of that year, and that as soon as they had agreed on a date for the hearing your office would be advised.

The question as to the company's default, raised by the applicant's appeal and by his objections, does

not demand further discussion, and the action of your office in this regard is approved.

The evidence taken at the last hearing was for-

warded to your office and, after examination, was transmitted with the entire record to the Department, February 29, 1908, accompanied by recommendations to the effect that the several applications should be rejected because the lode claims were not shown to be of value for mining purposes and were not valid mining claims, citing Brophy et al. v. O'Hare (34 L. D., 586). and because the millsites were not shown to be used or occupied for mining or milling purposes in connection with the lode claims, or to contain quartz mills or reduction works as contemplated by the statute. Your letter of transmittal concludes with the following:

January 11, 1908, the President, with a view to promoting public interest, issued a proclamation "reserving from appropriation and use of all kinds" a large portion of the Grand Canyon including said Bright Angel Trail, and setting it apart as a national monument, thereby preserving said trail as a necessary adjunct to said Grand Canyon and rendering it impossible for any person or persons to create a monopoly in the control thereof.

Your letter is accompanied by a copy of such proclamation, with a plat showing the exterior boundaries of the national monument.

By the Presidential proclamation mentioned, issued pursuant to the provisions of section 2 of the

Act of June 8, 1906 (34 Stat., 225), there were "reserved from appropriation and use of all kinds under all of the public land laws, subject to all prior valid adverse claims, and set apart as a National

Monument, all the tracts of land, in the Territory of Arizona, shown as the Grand Canyon National Monument on the diagram," forming a part of and attached to such proclamation. Warning was given therein to all unauthorized persons not to appropriate, injure or destroy any feature of the national monument or to locate or settle upon any of the lands reserved by the proclamation.

The issue of primary importance presented by the record now before the Department is as to the character of the land embraced in Cameron's lode locations and the use and occupation of the millsite claims for mining or milling purposes. Mining engineers, experts and practical miners, gave testimony on behalf of both parties. In the opinion of the Department the railroad company, by the evidence adduced in support of the protests, made out a *prima facie* case as against the patentable mineral character of the land and the validity of the use of the millsites, and it devolved upon the applicant to show affirmatively that such a use and occupancy of the millsites existed as would bring them within the statute, and that such conditions were to be found as would justify a prudent man in the further expenditure of his time and means with a reasonable prospect of developing paying mines upon the lode

acb—10 fs.

locations. See Castle *v.* *Womble* (19 L. D., 455); Chrisman *v.* Miller (197 U. S. 313).

In determining these important questions, due consideration is to be given to the fact that the tracts included in the present applications are within the

exterior limits of a National Monument, lawfully set apart and dedicated for the benefit of the public on account of its great natural beauty and grandeur. In the case of Joshua L. Smith (31 L. D., 57, 59), involving a settlement claim upon land afterwards included within a national forest, the Department said:

The executive order, reserving the land for a specific public purpose, must be held to be at least as effective upon the claims of settlers as would be the adverse claim of one who wished the land for his own use.

Again, in the case of Hattie E. Bradley (34 L. D., 191, 193), the Department gave like effect to a withdrawal for forestry purposes as against an application to purchase under the timber and stone act. Certainly, it must be said that the presidential proclamation here interposed, excepting from its operation only "all prior valid adverse claims," is to be deemed of no lesser import and effect.

The applicant's leading witness, W. M. Claypool, a mining engineer and metallurgist of wide experience and unquestioned ability, examined the claims upon three different occasions. He secured assay samples, observed the geological formation, and illustrated his testimony with drawings which have been of great assistance to a correct understanding of the case.

acb—11 fs.

It appears that the claims at the rim, the Golden Eagle and Cape Horn locations, are upon a formation of sedimentary origin, the upper stratum of

which is a yellowish limestone. Upon this limestone formation to the south and also to the west, at varying distances from the locations mentioned, many other mining claims have been located, from a number of which valuable ores have been extracted, shipped, and smelted. The mineral deposits so worked occur locally as concentrations in irregular fractures of the limestone, and derive their mineral contents of copper, accompanied by some iron, by a leaching process which has accumulated those minerals from the surrounding limestone, throughout which they are disseminated in minute quantities. The lime rock adjacent to these local mineral concentrations has in some instances been also extracted in connection therewith, and shipped to the smelters, for the reason that it furnishes a desirable flux in the smelting charge. It is stated that if the same copper contents were associated with quartz or silica in place of the limestone, the cost of reduction by smelting would be approximately $15 more per ton of material treated. The nearest claims to the

Golden Eagle and Cape Horn locations, from which ores out of this bed of limestone have been extracted and shipped, are from four to five miles distant. On the Captain Burro claim, owned by Cameron, distant about one-half mile west from the head of the trail, an open cut in the limestone along an irregular fracture had disclosed considerable copper bearing rock, and a sample assayed showed gold, a trace, silver 2.4 oz. per ton, and copper 20.5 per cent. The best assay returns from the Cape Horn showed gold, a

trace silver 1.8 oz., copper 12.5 per cent, and from the Golden Eagle gold, a trace, silver 1 oz., and copper 8.6 per cent.

Mr. Claypool, on cross-examination, said in reference to these two claims on the rim that Mr. Cameron had not been fortunate enough to find one of those places containing the larger quantity of higher grade material. He further stated in reference to assays mentioned in the testimony that—

These samples which show sufficiently high grade to justify shipment to foreign smelting works are selected and do not represent the entire mass of rock exposed on the various faces of the openings inspected.

The two lode claims toward the bottom of the canyon are far below the horizon of the sedimentary rocks which appear at the rim. The country rock in connection with the Magician and Wizard claims is an altered granite or gneiss, considerably broken up and shattered as the result of faulting. A well known fault of considerable magnitude, extending in a north-and-south direction, and known as the Bright

acb—13 fs

Angel Fault, exists in that vicinity, and these two claims, if not upon the main dislocation of the great Bright Angel Fault, at least are laid along accompanying and parallel slips and zones of fissuring. The shearing and slipping of the formation have produced seams and streaks of altered rock material and locally iron and copper streaks and stains in the rock are to be observed. Some silicification has occurred, and at points bands and lens-like

masses of quartz have been developed. In the most auspicious places upon the claims the rather limited development work has been performed. Assays of selected material from the Wizard claim, taken from the most promising disclosures, resulted in copper 9.5 per cent and 9.8 per cent, with maximum returns in gold and silver of .03 oz. and 1 oz., respectively. The applicant's returns from four assay samples from the Magician indicate gold nothing to a trace, silver a trace to 1 oz. per ton, and copper nothing. The deepest workings have penetrated the formation in each claim to a distance of 40 feet, yet the above are the best results from picked material.

Mr. Cameron testified that shortly before the hearing he had discovered upon the Magician claim a ledge, recently disclosed by the wash of flood waters, which is from 2 to 3 feet in width, and uncovered from a distance of some 60 feet in length,

acb—14 fs

and that a fair sample therefrom assayed 2.6 per cent copper, 97¢ silver, and 40¢ gold, while a picked sample gave 21.7 per cent copper, 75¢ silver and 40¢ gold.

Many other faults and local slips and so-called veins are known to exist in the granite formation near the bottom of the canyon, but there is no evidence in the record showing that a working or operating mine is located or to be found in that vicinity of the canyon in such formation.

It is shown by the evidence that from no one of the four locations involved has any material or ore

been taken out and shipped for smelting or other treatment, save for assaying only, which gave the maximum results above indicated. The company's assay returns from thirteen samples from the claims indicated nothing in either gold, silver, or copper, except one in which copper .4 per cent appeared, and in two, a trace. In many of the assays on behalf of the applicant, the results were gold, a trace; silver, a trace to 1.4 ounces; and copper nothing.

Assay returns such as these, considered in connection with all the circumstances here disclosed, wholly fail to establish the actual mineral character of the lands involved.

It is not pretended that the applicant has as yet actually disclosed any body of workable ore of commercial value; nor does the evidence reveal such indications and conditions as would warrant the belief or lead to the conclusion that valuable deposits are to be found, save, apparently, in the case of the Magician lode claim. With that possible exception, the probabilities of such deposits occurring are no stronger or more evident at the present time than upon the day the claims were located. The evidence wholly fails to show that there are veins or lodes carrying valuable and workable deposits of gold, silver, or copper, or any other minerals within the limits of the locations. Sufficient time has elapsed since these claims were located for a fair demonstration of their mineral possibilities. The most that can be said is that such mineral stains, streaks and

indications have been encountered as would suggest the possibility of the existence of mineral deposits of value in the formations described; but that such deposits do in fact exist cannot be reasonably inferred from the evidence adduced, much less can their existence be predicated upon the showing presented.

Further examination and discussion of the evidence upon this phase of the case would subserve no useful purpose.

As to what is necessary to constitute a discovery of mineral, there have been numerous decisions of the courts and the land department. The United States Supreme Court, in the case of United States v. Iron Silver Mining Co. (128 U. S., 673, 683) an action to set aside placer patents on the ground that the lands contained known lodes, said:

acb—16 fs

> It is not enough that there may have been some indications by outcroppings on the surface of the existence of lodes or veins of rock in place bearing gold or silver or other metals, to justify their designation as "known" veins or lodes. To meet that designation, the lodes or veins must be clearly ascertained and be *of such extent as to render the land more valuable on that account, and justify their exploitation.*

This definition was accepted as correct in the case of Iron Silver Mining Co. v. Mike and Star Co. (143 U. S., 394), an action by the ousted claimant of an alleged known lode within a patented placer to ob-

tain possession of the lode claim. In that case, Mr. Justice Field, speaking for the *minority* of the court, said (pp. 412, 424):

> The mere indication or presence of gold or silver is not sufficient to establish the existence of a lode. The mineral must exist in *such quantities as to justify expenditure of* money for the development of the mine and the extraction of the mineral. * * * It is not every vein or lode which may show *traces of gold or silver* that is exempt from sale or patent of the ground embracing it, but those only which possess these metals in *such quantity as to enhance the value of the land and invite the expenditure of time and money for their development.* No purpose or policy would be subserved by excepting from sale and patent veins or lodes yielding *no remunerative return* for labor expended upon them. Such exceptions would only be productive of embarrassment to the patentee, without any benefit to others.

The following principle has been stated by the Department in Castle v. Womble (19 L. D., 455–457):

acb—16 fs

> Where minerals have been found and the evidence is of such a character that a person of ordinary prudence *would be justified in the further expenditure* of his labor and means, with a reasonable prospect of success in developing a paying mine, the requirements of the statute have been met. To hold otherwise would tend to make of little avail, if not entirely nugatory,

that provisions of the law whereby "all valuable mineral deposits in lands belonging to the United States * * * are * * * declared to be free and open to exploration and purchase."

(In the above quotations the italics are supplied.)

These several holdings have been cited with approval by the Supreme Court in the case of Chrisman v. Miller (197 U. S., 313, 321), where there was a question as to the sufficiency of a discovery of petroleum, and the court there further said (p. 323):

It is true that when the controversy is between two mineral claimants, the rule respecting the sufficiency of a discovery of mineral is more liberal than when it is between a mineral claimant and one seeking to make an agricultural entry, for the reason that where land is sought to be taken out of the category of agricultural lands, the evidence of its mineral character should be reasonably clear, while in respect to mineral lands, in a controversy between claimants, the question is simply which is entitled to priority. That, it is true, is the case before us. But even in such a case, as shown by the authorities we have cited, there must be such a discovery of mineral as gives reasonable evidence of the fact either that there is a vein or lode carrying the precious mineral, or if it be claimed as placer ground that it is valuable for such mining.

* * * * * * * *

There was not enough in what he (the discoverer) claims to have seen to have justified a

prudent person in the expenditure of money and labor in exploiting for petroleum. It merely suggested a possibility that the ground

acb—17 fs

contained oil sufficient to make it "chiefly valuable therefor."

The department, in the case of Brophy et al. v. O'Hare (34 L. D., 596, 598–9), used the following language:

> To sustain the application for mineral patent, as against persons alleging the land to be nonmineral, it must appear that mineral exists in the land in quantity and of value sufficient to subject it to disposal under the mining laws. In other words, the land applied for must be shown to contain valuable deposits of mineral, which means more than a mere discovery that might be sufficient to support a location in the first instance.
>
> * * * * * * * *
>
> The evidence shows that the mining claim was located January 1, 1895, nearly ten years prior to the hearing, but no systematic work for the purpose of developing the land as a mining claim has been done thereon. No mineral of value has ever been secured from the claim, or from lands adjoining or in the immediate vicinity. At no time since the location of the claim has there been more than very slight indication of mineral veins or deposits therein. The evidence in behalf of the mineral claimant, not considering that of the protestants, fails to

> show that the land contains mineral in such quantity and of such value as to justify expenditures for its extraction, nor does it warrant the belief that further expenditures would disclose the presence of valuable deposits of mineral. Under such circumstances, the land must be held to be nonmineral in character and not subject to disposal under the mining laws.

Further authorities might be cited in this connection, but the above are amply sufficient to indicate the views entertained upon the question.

Upon the entire record, viewed and interpreted in the light of the leading authorities on the subject, the Department is clearly of the opinion that the

acb—18 fs

land is not shown to possess such mineral character and values as to justify the land department in awarding the desired patent.

The millsite claims must also be rejected, because the evidence fails to show a *bona fide* use and occupation of the same in connection with lode claims for mining or milling purposes. It is stated that upon one of the millsites there was a temporary camp for miners, and upon the other a blacksmith shop, which was utilized at times for the sharpening of mining tools used upon the lower claims. Just prior to the former hearing, it would appear that, by Cameron's orders, a pack-train load of material from the two lower claims was transported to the Indian Gardens and piled up on the two millsites. Just prior to the last hearing an arastra had been erected on one of the millsites, and was said to be

running and grinding some rock. There are two springs of good water situated upon these millsite claims, and from the springs the water has been diverted into ditches leading across the millsites, the alleged purpose being to utilize the same for milling purposes when a mill shall have been erected. The foregoing alleged mining uses are merely colorable, as the evidence plainly discloses, and do not show a compliance with the requirements of the statute governing the acquisition of millsites (Sec. 2337, Revised Statutes). At the time the respective applications were filed and at the date of the creation of the Grand Canyon National Monument, the millsite locations never had been used or occupied for mining and milling purposes, and therefore were not valid claims under the mining laws.

It follows from the foregoing that each of Cameron's applications for patent (Nos. 714, 715 and 716) must be rejected and canceled, and it is so ordered.

It is the further result of the evidence, and the Department holds, that the several mining locations, with the apparent exception of the Magician lode claim, do not stand upon such disclosures or indications of valuable mineral in rock in place therein, prior to the establishment of the National Monument and the withdrawal of the lands therein embraced, as to bring them within the saving clause of the Executive order. The right of Cameron to continue possession or exploration of those claims is hereby denied, and the land covered thereby is

declared to be and remain part of the Grand Canyon National Monument, as if such locations had not been attempted. In the case of the Magician lode location, however, whilst not supported upon the record by evidence of such mineral disclosures as to justify the issuance of a mineral patent at this time, the geological formation therein and its mineral indications are too favorable to warrant the

acb—20 fs

elimination of the claim. That location may therefore remain intact, subject to further development thereunder, without unnecessary injury to the National Monument, and compliance with the law in other respects, and to such future consideration as may be exercised by the Department with respect to it.

The foregoing deposition renders it unnecessary to consider any other question presented by the record.

The papers are herewith returned.

Very respectfully,

JAMES RUDOLPH GARFIELD,

Secretary.

No. 3001. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit "D." Filed May 23, 1917. F. D. Monckton, Clerk.

Plaintiff's Exhibit "E."

[Endorsed]: Plffs. Exhibit "E." Case of U. S. vs. Cameron. No. E—10 (Prescott). Admitted and Filed Aug. 4, 1916. Mose Drachman, Clerk. By R. E. L. Webb, Dep.

4—207

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C.

Mar. 16, 1916.

"B."

CRGD.

I hereby certify that the annexed copy of departmental decision of November 29, 1911, is a true and literal exemplification from the copy which is on file in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal] C. M. BRUCE,
Assistant Commissioner of the General Land Office.

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05217

(Copy)

DEPARTMENT OF THE INTERIOR
Washington.

Nov. 29, 1911.

D—70

"N"

Rejection of mineral applications Nos. 714, 715 and 716, Prescott (now Phoenix), Arizona. Contests 2049 and 2112.

Denied and further proceedings directed as to the Magician claim.

GRAND CANYON RAILWAY CO.,

v.

RALPH H. CAMERON.

MOTION FOR REVIEW OF DEPARTMENTAL DECISION OF FEBRUARY 11, 1909.

June 10, 1909, the Department entertained a motion for review of its unreported decision of February 11, 1909, in the above-entitled cause. After the service of said motion, the Department, January 9, 1911, directed that an impartial and thorough field investigation of the four lode mining claims involved be made by a competent and experienced geologist of the Geological Survey, of which action both parties were advised. The report of the geologist has been received, and both parties have been afforded an opportunity to examine it. Counsel for the Grand Canyon Railway Company, the protestant, have filed a statement that no further argument on their part is necessary; while counsel for Cameron,

the protestee, have filed a supplemental argument, in view of the report.

The history of the controversy sufficiently appears in the two prior reported decisions (35 L. D., 495, and 36 L. D., 66), and in the above unreported decision. The effect of the last decision was to reject three applications for patent made by Ralph H. Cameron for mining claims and mill sites in the Prescott (now Phoenix), Arizona, land district, as follows: No. 714, for the Magician lode claim and Alder mill site; No. 715, for the Wizard lode and Willow mill site, and No. 716, for the Golden Eagle and Cape Horn lodes, and to hold invalid and void all the above locations and mill sites, with the excep-

tion of the Magician, which *location* was held intact, pending further development.

The Department will first consider the matter solely upon the record as made up on the railway company's protest, leaving out of consideration, for the present, the report made by the geologist. After a careful consideration of that record, including the briefs of counsel, the Department is of opinion that its previous decision concerning the Wizard, Golden Eagle, and Cape Horn lodes, and the two mill sites, was correct, and should not be disturbed, and as to that, the motion for review is denied. This leaves, as the sole inquiry, the question whether the Railway

D—70 acb—3 fs—

Company's protest against the issuance of patent for the Magician lode should be dismissed or sustained. The allegations of this protest, as far as they relate to the Magician claim and are here material, are, in brief:

1. That no discovery of any valuable deposit of mineral has been made, and that the land located does not contain valuable deposits of mineral of any kind so far as known.

2. That the expenditure in improvements is insufficient for patent purposes.

3. That the claim was not located in good faith for mining purposes but for the purpose of controlling that portion of the Bright Angel trail leading from the rim of the Grand Canyon to the Colorado River, called the "Devil's Corkscrew," which is the only route by which it is possible to reach the river

from the protestant's station at the Grand Canyon.

At the outset, it should be pointed out that the Railway Company claims no adverse right to the land covered by the Magician lode, but appears solely as a protestant, or *amicus curiae.* The case, therefore, is in its nature *ex parte,* which greatly reduces the force of the objection urged against the motion for review, on the ground that it raises no new question of either law or fact.

The second allegation of the protest is not sup-

ported by the record, which shows the requisite expenditure of $500. This leaves but the first and third allegations for disposal. The following is a short abstract of the testimony regarding the existence of a vein or lode on the Magician claim, given both at the hearing and the rehearing:

The formation is an altered granite or gneiss which has been broken or shattered as the result of faulting. Two tunnels have been run in this formation; the lower nearer the river, 4 x 6 x 16 feet long, later extended to about 22 feet, and the upper 4 x 6 x 37 feet. These tunnels disclosed small bunches of quartz and narrow streaks of talc or gouge matter ranging from approximately two inches to eighteen inches in width. Assays secured from the material taken from these tunnels, including the quartz and talc, gave very low values, such as would not warrant a further expenditure in the development of the claim as a mining proposition.

There is testimony to the effect that in the late summer or fall of 1907 the action of flood waters uncovered a vein about 75 feet from the upper tunnel for a length of about 60 feet, and 2 or 3 feet wide; that a fair sample therefrom assayed 2.6/0/0 copper, 97 cents in silver, and 40 cents in gold per ton; that a selected sample ran 21.7/0/0 copper, 75 cents in silver, and 40 cents in gold. The testimony to this effect offered by the protestee was not rebutted or denied by the railway company.

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D—70

No ore, however, has been reduced or shipped from the claim.

Assuming that the above would be sufficient to constitute a discovery of a vein or lode, it is apparent that such discovery was made long after the application for patent and after publication and posting of notice had been completed. The application for patent must accordingly be rejected.

The lands were, by proclamation of January 11, 1908 (35 Stat., 2176), withdrawn and made part of the Grand Canyon National Monument, and "reserved from appropriation and use of all kinds under the public land laws, subject to all prior adverse claims," under the act of June 8, 1906 (34 Stat., 235). A discovery of a vein or lode as required by the mining laws on the Magician location prior to the above proclamation, therefore, would exclude such location from the lands reserved, otherwise the

tract covered by it would fall within the withdrawal and form part of the national monument.

Taking up the report of the geologist, it is found that it clearly corroborates the Department's above finding as to the Golden Eagle, Cape Horn, and Wizard lodes. As to the Magician Claim, the report of the geologist clearly tends to show that there has been no discovery of a vein or lode, and, if accepted, would negative the testimony above outlined. While both parties have had access to this report, yet it is not under oath and there has been no opportunity for cross-examination. It should not therefore be

taken as the basis of a final adjudication of the claimant's rights under his alleged location. The matter is therefore remanded with instructions that notice on such report, similar to notices issued on other field officers' reports, to the effect that there has been no discovery of a vein or lode on the Magician location, be issued for service upon the claimant. Unless claimant file sworn denial and application for hearing within thirty days from service of said notice, the location will be declared null and void. If he should file such denial and application for hearing, the Chief of Field Division should be notified thereof, and the same proceedings had as in those instituted upon reports of field officers.

The above renders it unnecessary at this time to pass upon the third allegation of the protest.

(Signed) SAMUEL ADAMS,
First Assistant Secretary.

MDT. 12/4.

No. 3001. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit "E." Filed May 23, 1917. F. D. Monckton, Clerk.

Plaintiff's Exhibit "F."

[Endorsed]: Plaintiff's Exhibit "F." Case of U. S. vs. Cameron. No. E—10 (Prescott). Admitted and filed Aug. 4, 1916. Mose Drachman, Clerk. By R. E. L. Webb. Deputy.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C.

Mar. 16, 1916.

"B"

CRGD.

I hereby certify that the annexed copy of office decision of April 3, 1912, is a true and literal exemplication from the press copy which is on file in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal] C. M. BRUCE,
Assistant Commissioner of the General Land Office.

A—1 acb—1 fs

IN REPLY PLEASE REFER TO ☞ Contests 204 & 2112 "N" CTY.

1x.

1xB&G.
1xC.P.&C. P.S.B.
1xC.F.D.
4xSolicitor.

CTY.

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE
WASHINGTON

April 3, 1912.

Address only the
Commissioner of the General Land Office.

Rejecting and canceling mineral applications 714, 715 and 716, except as to the Magician location of 714.

GRAND CANYON RAILWAY CO.

vs.

RALPH H. CAMERON.

Register and Receiver,
Prescott, Arizona.

Sirs:

May 24, 1905, Ralph H. Cameron filed mineral applications Nos. 714, 715 and 716, for the Magician lode and Alder millsite claims; Wizard lode and Willow millsite claims; and the Golden Eagle and Cape Horn lode claims, respectively.

The Grand Canyon Railway Company filed its protest against said applications, alleging the non-

mineral character of the lode claims and the non-use and non-occupancy of the millsites.

Hearings and decisions thereon were had, which it is not essential should be set out in detail at this time, further than to state that, on February 11, 1909, the Department held that the claims covered by said applications were invalid and should be re-

A—2 acb—2 fs.

Contests 2049 & 2112

jected, except as to the Magician lode claim, embraced in mineral application 714, which may remain intact, subject to further development, etc.

June 13, 1909, the Department entertained a motion for review of said decision of February 11, 1909, and returned the motion for service on the protestant company, with right to both sides to file briefs and arguments thereon.

January 9, 1911, the Department directed that a field investigation of the four mining claims be had by a geologist, with report thereon.

November 29, 1911, after receipt of said report and the filing of a brief by contestee, the Department considered said motion for review, adhered to its said decision of February 11, 1909, denied the motion, and remanded the case for rehearing as to said Magician lode claim.

In view of the foregoing, said Departmental decision of February 11, 1909, becomes final, and said mineral applications 714, 715 and 716, are hereby rejected and canceled, as to the locations and millsites applied for, except as to said Magician lode

claim, and so noted on the records of this office, thus closing the case as to said 715 and 716, and as to the Alder millsite of said 714. The right of

A—3 acb—3 fs.

Contests 2049 & 2112.

Cameron to continue possession or exploration of the claims, hereby rejected and canceled, is finally denied, and the land covered thereby declared to be and remain part of the Grand Canyon National Monument, and will be administered as such.

Note the foregoing on your records and advise the parties in interest hereof.

Very respectfully,

S. V. PROUDFIT,
Assistant Commissioner.

BOARD OF LAW REVIEW.
By W. B. PUGH.
4/2/12 akg.

No. 3001. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit "F." Filed May 23, 1917. F. D. Monckton, Clerk.

Plaintiff's Exhibit "G."

4—207.

[Endorsed]: Plaintiff's Exhibit "G." Case of U. S. vs. Cameron. No. E.—10 (Prescott). Admitted and Filed Aug. 4, 1916. Mose Drachman, Clerk. By R. E. L. Webb, Deputy.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C.

Mar. 16, 1906.

"B."

CRGD.

I hereby certify that the annexed copy of application for patent, is a true and literal exemplification which is on file in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal] C. M. BRUCE,
Assistant Commissioner of the General Land Office.

025503—1 acb—1 fs a
025503
1474010

APPLICATION FOR PATENT.

Received Jul. 28, 1914. U. S. Land Office, Phoenix, Ariz.

State of Arizona,
County of Maricopa,—ss.

Fees $10,.....
Comm. $.....
Pur. Mon. $.....
Test. Fees $.....
P. 7/29/14....

APPLICATION FOR PATENT FOR THE CAPE HORN LODE MINING CLAIM.

To the Register and Receiver of the U. S. Land Office at Phoenix, Arizona.

R. H. Cameron, being duly sworn, according to law, deposes and says: That in virtue of a compliance with the mining rules, regulations and customs, by R. H. Cameron, who is applicant for patent herein, has become the owner of, and is in the actual, quiet and undisturbed possession of 1500 linear feet of the Cape Horn lode mining claim, together with surface ground 600 feet in width, for the convenient working thereof, as allowed by local rules and customs of miners and the laws of the United States and the laws of the State of Arizona said mineral claim, vein, lode or deposit and surface ground being situated in the unorganized Mining District, County of Coconino, State of Arizona, and being more particularly set forth and described in the official field notes of survey thereof, hereto attached, dated 8th day of April 1905, and in the official plat of said survey, now posted conspicuously upon said Mining Claim or premises, a copy of which is filed herewith.

Deponent further states that the facts relative to his right of possession of himself to said Mining Claim, vein, lode or deposit and surface ground, so surveyed and platted, are substantially as follows, to wit; said Cape Horn lode was originally located by R. H. Cameron, applicant herein, on April 10,

1902; that title so acquired by location has since remained in said R. H. Cameron continuously, as will more fully appear from abstract of title herewith and made a part hereof.

Said Cape Horn lode claim is traversed in a southeasterly and northwesterly direction by the Bright Angel Fault, and said claim is covered to a large extent with ore-bearing lime in which occur irregular fractures in which are concentrations of copper ores, same being lateral secretion deposits. A specimen from said ore body assayed 12½% copper, 1 oz. silver, and trace of gold. Several thousand tons of copper ore have been shipped from the Anita Mine, which mine lies a few miles south of and in formation identical with that of said Cape Horn lode

025503—2 acb—2fs. a

mining claim. Which will more fully appear by reference to the copy of the original record of location heretofore furnished, and the abstract of title hereto attached and made a part of this affidavit; the value of the labor done and the improvements upon said claim, by himself and his grantors, being equal to the sum of Two hundred fifty Dollars, and said improvements consist of three cuts. For common improvements to be credited to said Cape Horn lode, see Application for Golden Eagle lode, Survey No. 2022.

That portion of the station grounds of the Grand Canyon Railway Company in conflict with said Cape Horn lode, is hereby expressly excluded from this application.

In consideration of which facts, and in conformity with the provisions of Chapter Six of Title XXXII, of the Revised Statutes of the United States, and under the amendments thereof, application is hereby made for and in behalf of said R. H. Cameron, for a patent from the Government of the United States for the said Cape Horn Lode Mining Claim, vein, lode, deposit and the surface ground so officially surveyed and platted.

R. H. CAMERON.

Subscribed and sworn to before me, this 28th day of July, A. D. 1914, and I hereby certifiy that I consider the above deponent a credible and reliable person, and that the foregoing affidavit, to which was attached the field-notes of survey of the Cape Horn Lode Mining Claim, was read and examined by him before his signature was affixed thereto and the oath made by him.

[Seal] HENRY LARSON,
Notary Public.

(My commission expires Jan. 19, 1918.)

[Written across face of first sheet.] Application rejected by "N," 9-27-15. G. H. W. "N."

No. 3001. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit "G." Filed May 23, 1917. F. D. MONCKTON, Clerk.

Plaintiff's Exhibit "H."

[Endorsed]: Plaintiff's Exhibit "H." Case of U. S. vs. Cameron. No. E–10 (Prescott). Admitted and filed Aug. 4, 1916. Mose Drachman, Clerk. By R. E. L. Webb, Deputy.

4—207.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C.

Mar. 16, 1916.

"B."
CRGD.

I hereby certify that the annexed copy of office decision of March 23, 1915, is a true and literal exemplification of said decision which is on file in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal] C. M. BRUCE,
Assistant Commissioner of the General Land Office.

acb—1 fs b
F. C. D.

In reply please refer to ☞Phoenix 025503 "N"
GHW.

1 x
GHW.
D-30409

1 x
1 x G. W. Helm
4 x Sol. Dept. Agric.

DEPARTMENT OF THE INTERIOR
CENTRAL LAND OFFICE
WASHINGTON

March 23, 1915.

Address only the
Commissioner of the General Land Office

Rejecting application.

Register and Receiver,
Phoenix, Arizona.

Sirs:

July 28, 1914, Ralph H. Cameron filed mineral application 025503, for the Cape Horn lode, survey 2023, situated in Sec. 23, T. 31 N., R. 2 E., G. & S. R. B. & M.

Inspection of the plat of survey, approved April 8, 1905, reveals a variance with the field notes, in which the first course is described as N. 82° 24′ W., while it is noted on the plat as N. 82° 42′ W. The notice posted upon the claim, however, follows the description given in the field notes. Exclusion is made, in the application and in posted notice of the conflict with the station grounds of the Grand Canyon Railway Company, which conflict is delineated upon the plat by courses and, in part, by distances, but is not in any way described or referred to in the field notes; neither is it shown upon the plat of survey No. 2023,

Phoenix 025503 "N" GHW. acb—2 fs b

filed with rejected Prescott M. A. 716, now serial 05217, of which the plat submitted with 025503 purports to be a copy. These are matters referable to

the Surveyor General should the application be allowed.

The abstract of title is regularly brought down to April 22, 1905, from which date it purports to be continued to August 25, 1914. The certification of this supplemental abstract, by the County Recorder, is as follows:

> "I, Dan J. Cronin, County Recorder in and for the County of Coconino, State of Arizona, and custodian of the records of said office do hereby certify that the next following nine pages constitute a true and correct abstract of the assessment work that was done on the Cape Horn Mining Claim, since December 31, A. D. 1904, according to the indexes of mining assessment work records of this office."

The above is merely an abstract of the indexes of mining assessment work and not such an abstract of title as is contemplated by paragraph 42, U. S. Mining Regulations, as amended January 9, 1912, which demands that:

> "The certificate must state that no conveyances affecting, or purporting to affect, the title to the claim or claims appear of record other than those set forth."

In the event of the allowance of the application, the applicant should be required, under penalty of rejection to submit a supplemental abstract of title, duly certified in accordance with said amended regulation 42.

Phoenix 025503 "N" GHW. acb—3fs b

As shown by the records of this office, T. 31 N., R.

2 E., was withdrawn by Executive Proclamation of February 20, 1893, for the Grand Canyon National Forest; also by Proclamations of May 6, 1905, and August 8, 1906. January 11, 1908, Secs. 1 to 22, inclusive, fractional parts of 23 and 24, all of 28 to 32, inclusive, and the west half of 33, were withdrawn for the Grand Canyon National Monument, by Executive Proclamation, under the act of June 8, 1906. July 1, 1910, by Executive Proclamation, the name of that part of the Grand Canyon National Forest south of the Colorado River was changed to Tusayan National Forest.

As shown by a diagram tracing, transmitted August 26, 1914, by the Surveyor General of Arizona, the Cape Horn lode is wholly within the Tusayan National Forest and partly within the Grand Canyon National Monument. A comparison of said diagram with the plat of survey 2023 shows, however, that the claimed discovery of the Cape Horn lode is wholly within the National Monument.

The proclamation of January 11, 1908, establishing the Grand Canyon National Monument, provides:

> "that there are hereby reserved from appropriation and use of all kinds under all of the public land laws, subject to all prior valid adverse claims, and set apart as a National Monument, all the tracts of land, in the Territory of Arizona, shown as the Grand Canyon National Monument on the diagram forming a part hereof.

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Phoenix 025503 "N" GHW.

The reservation made by this proclamation is not intended to prevent the use of the lands for forest purposes under the proclamation establishing the Grand Canyon National Forest, but the two reservations shall both be effective on the land withdrawn, but the National Monument hereby established shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure or destroy any feature of this National Monument or to settle upon any of the lands reserved by this proclamation."

The Cape Horn lode, according to the abstract of title and copies of location certificates submitted with the record, was located by Ralph H. Cameron, April 10, 1902, and amended by him February 23, 1904. It is upon this amended location of February 23, 1904, that mineral application 025503 is sought to be based.

The location in question has been the subject of much controversy before this office and before the Department. May 24, 1905, the present applicant, Ralph H. Cameron, filed Prescott mineral application No. 716, for the Golden Eagle lode, survey 2022, and the Cape Horn lode, survey 2023. February 11, 1909, as the result of protests filed by the Grand Canyon Railway Company, the Department, on appeal from the decision of this office, as to this and other applications by Cameron, upon the issue pre-

sented by the record as to the character of the

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Phoenix 025503 "N" GHW.

land embraced in these locations, after a full discussion of the facts disclosed by the testimony taken at the hearings and of the law applicable thereto, held:

> "Upon the entire record, viewed and interpreted in the light of the leading authorities on the subject, the Department is clearly of the opinion that the land is not shown to possess such mineral character and values as to justify the land department in awarding the desired patent."

Proceeding upon this basis, and as a direct result therefrom, it was directed, further:

> "It follows from the foregoing that each of Cameron's applications for patent (Nos. 714, 715 and 716) must be rejected and canceled, and it is so ordered.
>
> It is the further result of the evidence, and the Department holds, that the several mining locations, with the apparent exception of the Magician lode claim, do not stand upon such disclosures or indications of valuable mineral in rock in place therein, prior to the establishment of the National Monument and the withdrawal of the lands therein embraced, as to bring them within the saving clause of the Executive order. The right of Cameron to continue possession and exploration of these claims is hereby denied, and

the land covered thereby is declared to be and remain part of the Grand Canyon National Monument, as if such locations had not been attempted."

June 10, 1909, the Department entertained a motion for review of its decision of February 11, 1909.

November 29, 1911, the Department, in the decision denying the motion for review, used the following language:

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Phoenix 025503 "N" GHW.

"The history of the case sufficiently appears in the two prior reported decisions (35 L. D., 495, and 36 L. D., 66), and in the above unreported decision. The effect of the last decision was to reject three applications for patent made by Ralph H. Cameron for mining claims and mill sites in the Prescott (now Phoenix), Arizona, land district, as follows: No. 714, for the Magician lode claim and Alder mill site; No. 715, for the Wizard lode and Willow mill site; and No. 716, for the Golden Eagle and Cape Horn lodes, and to hold invalid and void all the above locations and mill sites, with the exception of the Magician, which location was held intact, pending further development."

April 3, 1912, by letter "N," this office closed the case, in the following words:

In view of the foregoing, said Departmental decision of February 11, 1909, becomes final, and said mineral applications 714, 715 and 716 are

hereby rejected and canceled, as to the locations and mill sites applied for, except as to said Magician lode claim, and so noted on the records of this office, thus closing the case as to said 715 and 716, and as to the Alder mill site of said 714. The right of Cameron to continue possession or exploration of the claims, hereby rejected and canceled, is finally denied, and the land covered thereby declared to be and remain part of the Grand Canyon National Monument, and will be administered as such."

It is evident from the above that mineral application 025503 has no substantial basis; but is merely an attempted reinstatement of the location heretofore vacated, annulled and declared invalid, the status of which as nonmineral was effectually and finally fixed by the Departmental decision of February 11, 1909, and its subsequent affirmation, on November 29, 1911, as to all portions, at least, of said location within the Grand Canyon National Monument, in

acb—7 fs b

Phoenix 025503 "N" GHW.

which, also, the claimed discovery was included.

Since April 3, 1912, the date of which this office carried into effect the mandate of the Department by rejecting and canceling Prescott mineral application 716, now Phoenix serial 05217, no attempt at relocation appears to have been made; nor was any such possible as to any part of said Cape Horn claim within the National Monument.

To support a mineral application, a valid and sub-

sisting mineral location is the prime requisite. In the case presented, the location has been declared void and invalid by the Department, has been annulled and set aside and has no further force and effect. It is, therefore, neither valid nor subsisting, and this office is without jurisdiction to allow an application for patent supported and based thereon.

In view thereof, mineral application 025503, for the Cape Horn lode, survey 2023, is hereby rejected, subject to the usual right of appeal. You will allow the applicant thirty days from notice within which to appeal, in default whereof, the rejection will be made final without further notice. Report promptly.

One copy hereof enclosed for service.

Very respectfully,

(Signed) CLAY TALLMAN,

Commissioner.

BOARD OF LAW REVIEW.

By W. B. PUGH.

No. 3001. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit "H." Filed May 23, 1917. F. D. Monckton, Clerk.

Plaintiff's Exhibit "I."

[Endorsed]: Plaintiff's Exhibit "I." Case of U. S. vs. Cameron. No. E.—10 (Prescott). Admitted and filed Aug. 4, 1916. Mose Drachman, Clerk. By R. E. L. Webb, Deputy.

4—207

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
"B." WASHINGTON, D. C.
CRGD. Mar. 16, 1916.

I hereby certify that the annexed copy of departmental decision of August 4, 1915, is a true and literal exemplification from the press copy which is on file in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal] C. M. BRUCE,
Assistant Commissioner of the General Land Office.

acb—1 fs c

Official Copy.
Not to be Taken from the Record. 10

DEPARTMENT OF THE INTERIOR.
D—30409 WASHINGTON.
August 4, 1915.

"N."

Phoenix 025503.
Mineral Application Rejected.
Affirmed.
Decision Promulgated Aug. 10, 1915.

Ex parte RALPH H. CAMERON.

APPEAL FROM THE GENERAL LAND OFFICE.

July 28, 1914, Ralph H. Cameron filed mineral application 025503, for the Cape Horn Lode mining

claim, survey 2023, situated in Sec. 23, T. 21 N., R. 2 E., G. and S. R. B. and M., Phoenix, Arizona, land district, the application being based upon a location made April 10, 1902, and amended February 23, 1904.

All of the claim is within the limits of the Tusayan National Forest, originally reserved February 20, 1893, and part of the claim, including the alleged discovery, is within the Grand Canyon National Monument, established January 11, 1908.

This claim was, with others, the subject of departmental decisions of April 9, 1907 (35 L. D., 495), February 11, 1908, unreported, and November 29, 1911, unreported. The last two decisions were ren-

Received G. L. O.
Sep. 20, 1915.
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D—30409

dered after hearing duly had in the case January 20, 1898, and the decision of February 11, 1909, *supra,* particularly exhaustively considered the said locations and the character of the land included therein, the Department finding with respect to the Cape Horn, Golden Eagle, and one other lode claim involved that—

> The evidence wholly fails to show that there are veins or lodes carrying valuable and workable deposits of gold, silver, or copper, or any other minerals within the limits of the location.

Said decision further held—

> It is the further result of the evidence and the Department holds that the several mining

locations, with the apparent exception of the Magician lode claim, do not stand upon such disclosures or indications of valuable mineral in rock in place thereto prior to the establishment of the national monument and the withdrawal of the lands therein embraced as to bring them within the saving clause of the Executive order.

It thus appears from the foregoing that as the result of a hearing had after the creation of the national monument, the Department expressly found that no discovery of mineral had been made within the limits of the Cape Horn location, and that there was no evidence before the Department showing the existence of any valuable deposits or any minerals within the limits of the location.

As a result of said decisions, the then pending

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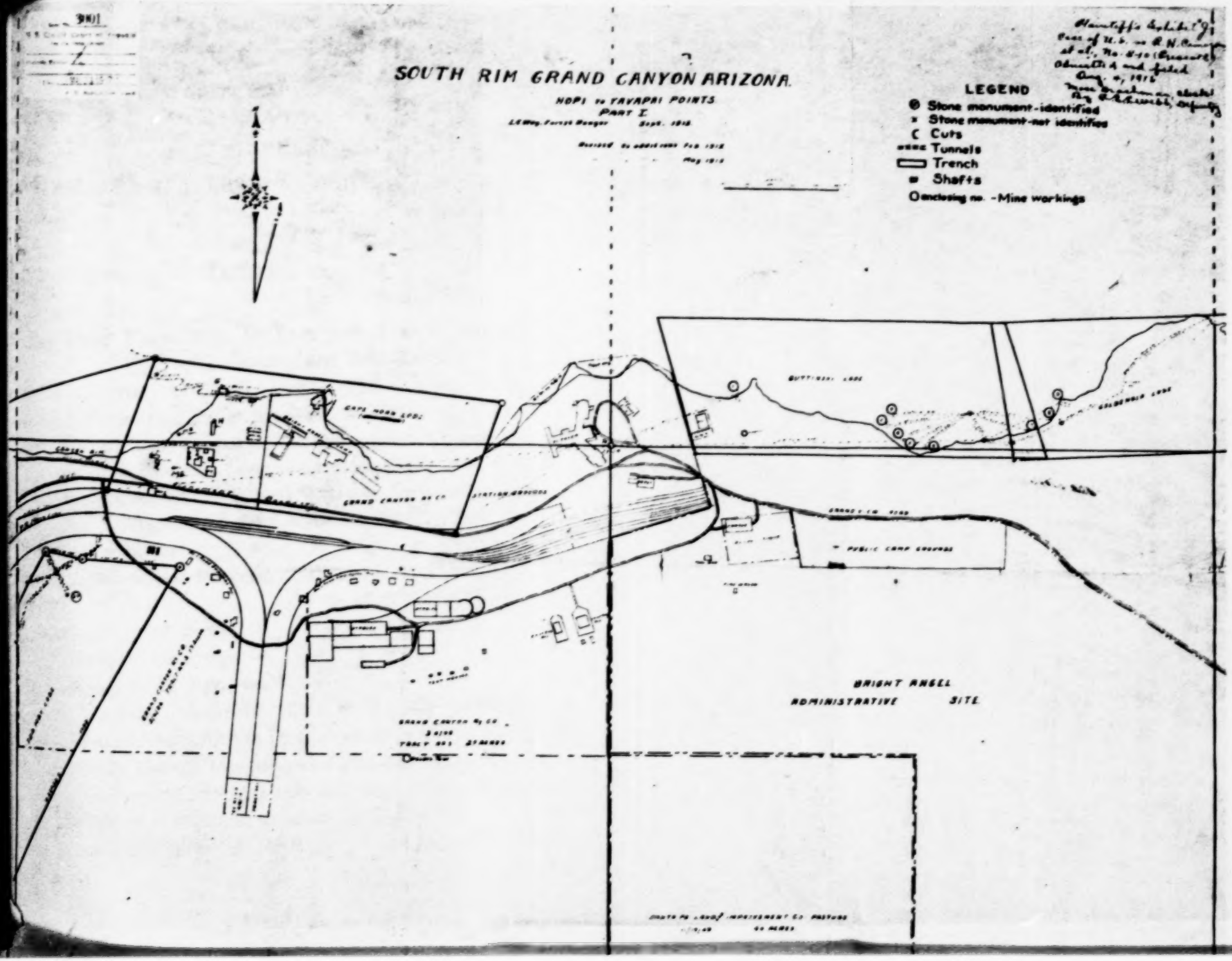
application was finally rejected and canceled, and the records appropriately noted, pursuant to Commissioner's letter of April 3, 1912.

As pointed out in the Commissioner's decision of March 23, 1915, with respect to the present application, the latter is based upon the same locations as the first application, fully considered by the Department in the decisions described. So far as the portions of the claim included within the exterior limits of the national monument is concerned, no discovery which would defeat the said monument can have been made since the date of the previous hearing in this case, nor do I find that one is claimed to have been made since the former decision in any part of the alleged location. The present application, therefore,

in effect, constitutes an attempted reinstatement of the application heretofore rejected and canceled. It is supported by no showing of error in the previous decisions of the Department, nor does it point out any evidence that was overlooked therein. Under the circumstances, this Department must conclude that the present application has no valid basis and can not be allowed. For this reason, the action of the Commissioner is affirmed. It may be stated that this conclusion is reached, irrespective and without consideration of protest filed by the Forest Service.

FRANKLIN K. LANE,
Secretary.

No. 3001. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit "I." Filed May 23, 1917. F. D. Monckton, Clerk.


SOUTH RIM GRAND CANYON ARIZONA.
HOPI to YAVAPAI POINTS
PART I.
LEGEND
Stone monument - identified
Stone monument - not identified
Cuts
Tunnels
Trench
Shafts
enclosing no. - Mine workings
BRIGHT ANGEL
ADMINISTRATIVE SITE

In the United States District Court for the District of Arizona.

E. 10—PRESCOTT.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH H. CAMERON et al.,

Defendants.

Order Under Rule 16 Enlarging Time to May 23, 1917, to File Record and Docket Case.

GOOD CAUSE HAVING BEEN SHOWN, as appears from the attached affidavit of J. E. Morrison, the time for perfecting the appeal in the above-entitled case and filing the transcript on appeal in the United States Circuit Court of Appeals for the Ninth Circuit is hereby extended for the period of thirty days.

Done at San Francisco, California, April 23d, 1917.

WM. W. MORROW,
U. S. Circuit Judge.

District of Arizona,
Maricopa County,—ss.

I, Mose Drachman, Clerk of the United States District Court for the District of Arizona, do hereby certify that the foregoing is a true, accurate and correct copy of an order this day filed in my office at Phoenix, Arizona, in the above-entitled cause.

IN WITNESS WHEREOF, I have hereunto set

my official hand and affixed the seal of said Court this 25th day of April, 1917.

[Seal] MOSE DRACHMAN,
Clerk.
By R. E. L. Webb,
Deputy.

[Endorsed]: Equity 10 (Prescott). United States District Court for District of Arizona. United States of America, Plaintiff and Appellee, vs. Ralph H. Cameron et al., Defendants and Appellants. Certified Copy of Order Extending Time on Appeal.

No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Certified Copy of Order Under Rule 16 Enlarging Time to May 23, 1917, to File Record thereof and to Docket Case. Filed Apr. 27, 1917. F. D. Monckton, Clerk. Refiled May 23, 1917. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL,

Appellants,

v.

UNITED STATES OF AMERICA,

Appellee.

Stipulation for Modification of Order Allowing Appeal and Suspending Decree Pending Appeal.

It is hereby stipulated between the parties hereto that the order of the Honorable Wm. W. Morrow, Judge of the United States Circuit Court of Appeals for the Ninth Circuit, allowing the appeal in the above-entitled case and staying, superseding, and suspending during the pendency of said appeal, the decree entered in the above-entitled cause by the District Court of the United States for the District of Arizona on the 23d day of March, 1917, and which said order was filed in the said District Court, on the 7th day of April, 1917, may be modified to the extent that said order may provide that during the pendency of said appeal, the defendants and each of them shall not use or occupy any of the lands described in said decree, in violation of any regulations of the Secretary of Agriculture applicable to valid mining claims in National Forests.

Dated at Phoenix, Arizona, May 2d, 1917.

ROBT. E. MORRISON,
J. E. MORRISON,
Attorneys for Appellants.
THOMAS A. FLYNN,
United States Attorney for the District of Arizona.

In the United States District Court for the District of Arizona.

IN EQUITY—No. 10.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL,

Defendants.

The above-named defendants, conceiving themselves aggrieved by the decree made and entered on the 23d day of March, 1917, in the above-entitled cause, do hereby appeal from said order and decree to the United States Circuit Court of Appeals for the 9th Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and they pray that this appeal be allowed, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the 9th Circuit, and that the operation of the said decree, and all thereof, be stayed, superseded, and suspended, during the pendency of this appeal.

ROBT. E. MORRISON,
J. E. MORRISON,
Solicitors for Defendants.

The foregoing claim of appeal is allowed, and the said decree and its operation is hereby stayed, super-

seded, and suspended, during the pendency of this appeal, upon the defendants filing a bond in the sum of $5,000.

WM. W. MORROW,
Circuit Judge.

United States of America,
District of Arizona,—ss.

I, Mose Drachman, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true, perfect and complete copy of the decree and motion for and order allowing appeal as the same appears from the original records of the same remaining in my office.

WITNESS my hand and the seal of said Court affixed this 2d day of May, 1917.

[Seal] MOSE DRACHMAN,
Clerk.
By R. E. L. Webb,
Deputy Clerk.

United States District Court in and for the District of Arizona.

E. 10—PRESCOTT.

UNITED STATES OF AMERICA,
Plaintiff,

v.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL,
Defendants.

Decree.

This cause came on regularly to be heard before the Court at Prescott, Arizona, on the 4th day of August, 1916, and the 22d day of March, 1917, the United States being represented by Thomas A. Flynn, Esquire, United States Attorney, and J. O. Seth, Esquire, Assistant to the Solicitor for the Department of Agriculture, and the defendants appearing by Robert E. Morrison, Esquire, and Joseph E. Morrison, Esquire, and evidence being taken, and the Court being fully advised in the premises, now, therefore, it is

ORDERED, ADJUDGED AND DECREED:

1. That the defendants, their agents, servants and employees, and all persons claiming through or under them, be, and they are hereby enjoined and restrained from occupying, using, or asserting any claim or right to the ownership, occupancy, use or possession of, or engaging in business of any kind whatsoever upon, or from interfering in any manner whatsoever with the administration or use by the plaintiff, its officers, agents, or permittees of the lands of the plaintiff described as follows:

> Beginning at corner number one (1) from which the quarter section corner between section twenty-three (23) and twenty-four (24), township Thirty-one (31) north, Range Two (2) east, Gila Salt River Base and Meridian bears north fifty-nine (59) degrees, forty-seven (47) minutes east, Seven hundred and eighty and four tenths (780.4) feet distant, thence north eighty-

two (82) degrees, twenty-four (24) minutes west, fifteen hundred (1500) feet to corner number two (2), thence north twenty (20) degrees, two (2) minutes east, six hundred (600) feet to corner number three (3, thence south eighty-two (82) degrees twenty-four (24) minutes east fifteen hundred (1500) feet to corner number four (4), thence south twenty (20) degrees two (2) minutes west six hundred (600) feet to corner number one (1), the place of beginning,

excepting that portion thereof comprising the station grounds of the Grand Canyon Railway Company, said above described lands being the same as those embraced within the so-called Cape Horn lode mining claim, location notice of which is of record in the office of the County Recorder of Coconino County, Arizona, in Book Four of Mines, at Page 106, and amended location notice whereof is recorded in Book Five of Mines, at page 363, in said office.

2. That the defendants, their agents, servants and employees, and all persons claiming through or under them, be and they are hereby enjoined and restrained from making any excavations whatsoever in or on the aforesaid lands of the plaintiff; provided, however, that upon written application to this court specifying the extent, place, date of beginning and probable duration of such work, and the names of the parties by whom such work will be done, the Court, may upon such conditions, and subject to such restrictions as may seem necessary, allow the defendants during the pendence of any appeal herefrom to continue existing tunnels or shafts to an extent suffi-

cient to comply with the laws governing annual assessment work.

3. That the defendants shall, and they are hereby commanded to, remove within thirty days from the date of this decree all deposits of filth, manure, and refuse from said lands of the plaintiff, and to restore the said lands to as nearly as possible their natural state, provided that the officials of the Forest Service shall on application by the defendants designate some suitable place within a reasonable distance from the aforesaid lands of the plaintiff where such manure, filth and refuse may be deposited.

4. That the defendants shall, and they are hereby commanded to, begin within thirty (30) days from the date of this decree the removal of all buildings and structures from said lands of the plaintiff, and to complete the removal of such buildings and structures within a period of sixty (60) days from the date of this decree; provided that if an appeal from this decree is perfected in the usual manner within said period of thirty (30) days, then the operation of that portion of this decree requiring the removal of buildings or structures shall be suspended while said appeal is pending and is being diligently prosecuted; and provided further that during said period of thirty (30) days and during the pendency of an appeal taken and prosecuted as aforesaid, the defendant Ralph H. Cameron, his family and domestic servants, and his agents not exceeding three in charge of said defendants' mining interests at the Grand Canyon, may occupy said buildings in connection

with said mining operations, but no occupancy of said buildings by other parties or for other purposes shall be permitted except under permit regularly secured from the officials of the Forest Service.

5. That this court retain jurisdiction over this cause for such further orders as may appear proper.

6. That the plaintiff recover of and from the defendants its costs to be taxed by the Clerk.

Done in open court this 23d day of March, 1917, at Prescott.

WM. H. SAWTELLE,
Judge of the United States District Court for the District of Arizona.

[Endorsed]: No. 3001. In the Circuit Court of the United States for the Ninth Circuit. Ralph H. Cameron et al., Appellants, vs. United States of America, Appellee. Stipulation for Order Modifying Order Allowing Appeal, etc. Filed May 4, 1917. F. D. Monckton, Clerk. Re-filed May 23, 1917. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Order Modifying Order Allowing Appeal.

Upon stipulation of counsel for the respective parties this day filed, and good cause therefor appearing, it is hereby ORDERED, that the order allowing an appeal to this court in the above-entitled cause and staying, superseding and suspending the decree of the District Court for the District of Arizona in above cause, made and entered on the 23d day of March, A. D. 1917, be, and hereby is modified to the extent that during the pendency of said appeal, the defendants and each of them shall not use or occupy any of the lands described in the said decree of said District Court in violation of any regulation of the Secretary of Agriculture applicable to valid mining claims in National Forests.

WM. W. MORROW,

United States Circuit Judge and Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: San Francisco, California, May 4, 1917.

[Endorsed]: No. 3001. United States Circuit Court of Appeals for the Ninth Circuit. Ralph H. Cameron et al. vs. U. S. A. Order Modifying Order Allowing Appeal, etc. Filed May 4, 1917. F. D. Monckton, Clerk. Re-filed May 23, 1917. F. D. Monckton, Clerk.

[Endorsed]: Printed Transcript of Record. Filed Oct. 9, 1917. F. D. Monckton, Clerk.

No. 3001

United States
Circuit Court of Appeals
For the Ninth Circuit.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Upon Appeal from the United States District Court for the District of Arizona.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term, to wit, the October Term, A. D. 1917, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court-room thereof, in the City and County of San Francisco, in the State of California, on Friday, the eighth day of February, in the year of our Lord one thousand, nine hundred and eighteen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge.

No. 3001.

RALPH S. CAMERON et al.,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Order of Submission.

ORDERED appeal in the above-entitled cause argued by Mr. Robert E. Morrison, counsel for the appellants, and by Messrs. J. O. Seth and Morton M. Cheney, counsel for the appellee, and submitted to the Court for consideration and decision.

At a stated term, to wit, the October term, A. D. 1917, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Monday, the sixth day of May, in the year of our Lord one thousand, nine hundred and eighteen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM H. HUNT, Circuit Judge.

IN THE MATTER OF THE FILING OF CERTAIN OPINIONS AND OF THE FILING AND RECORDING OF CERTAIN JUDGMENTS AND DECREES.

By direction of the Honorable William B. Gilbert, Erskine M. Ross, and William W. Morrow, Circuit Judges, before whom the causes were heard, ORDERED that the typewritten opinion this day rendered by this Court in each of the following entitled causes be forthwith filed by the clerk, and that a Judgment or Decree be filed and recorded in the minutes of this court in each of the causes in accordance with the opinion filed therein: Ralph H. Cameron et al., Appellants, vs. The United States of America, Appellee. No. 3001. * * *

In the United States Circuit Court of Appeals, for the Ninth Circuit.

No. 3001.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Opinion U. S. Circuit Court of Appeals.

Upon Appeal from the United States District Court for the District of Arizona.

Before GILBERT, ROSS and MORROW, Circuit Judges.

The Court below entered a decree against the appellants (defendants there), among other things enjoining them from occupying, using or asserting any claim to, or from engaging in business of any kind upon, or from interfering in any manner with, the administration or use by the Government (complainant in the case), its officers, agents, or permittees, of a certain piece of land specifically described in the bill, excepting that portion thereof comprising the station grounds of the Grand Canyon Railway Company, which piece of ground is alleged in the bill to be the same as that "embraced within the so-called Cape Horn Lode Mining Claim, location notice of which is of record in the office of the County

Recorder of Coconino County, Arizona, in book four of Mines, at page 106, an amended location notice whereof is recorded in book five of Mines, at page 363 in said office"; and from making any excavations in that ground, and requiring the appellants to remove therefrom within a specified time all deposits of filth and refuse and all buildings and structures, with certain exceptions and provisos not necessary to be stated.

The bill alleged, among other things, the ownership of the ground by the complainant, and that it, with other lands, was on February 20th, 1893, withdrawn and set apart as the Grand Canyon Forest Reserve by the proclamation of the President issued pursuant to the act of Congress approved March 3d, 1891 (26 Stats. L. 1095), which lands have been at all times since the said date part and parcel of a National Forest of the United States, and are now a part and parcel of the Tusayan National Forest established by proclamation of the President June 28th, 1910, issued pursuant to the said act of Congress and of the act approved June 4th, 1897 (30 Stats. L. 11); that the aforesaid lands of the Government, with the exception of a strip about 75 feet in width along the southern boundary thereof, were, with other lands, further withdrawn January 11th, 1908, and set apart by proclamation of the President issued pursuant to the act of Congress approved June 8th, 1906 (34 Stats. L. 225), as the Grand Canyon National Monument for the protection of the Grand Canyon of the Colorado River, which lands have been at all times since January 11th, 1908, and are now a part and

parcel of the said Grand Canyon National Monument; that the Grand Canyon of the Colorado River is an object of great scientific and scenic interest and is visited by many thousands of persons each year, and that the said lands by reason of their location upon and along the south rim of the canyon and immediately west of and adjacent to the railroad terminal and the principal hotel buildings, and by reason of the fact that they enclose the head of Bright Angel Trail, the principal means of access by the public to the bottom of said canyon, constitute a very important part of the Grand Canyon National Monument and of right should be open to the free access at all times by the public and to the unhampered administration by the officers and agents of the Government for the protection and accommodation of the large number of persons desirous of viewing the wonderful scenery there.

The bill further alleged, among other things, that on April 10th, 1902, the defendant Ralph H. Cameron, in pretended compliance with the mining laws of the United States, located the said specifically described piece of ground of the Government as the Cape Horn Lode Mining Claim, and on February 23d, 1904, made an amended location thereof; and on May 17th, 1905, filed with the Register and Receiver of the United States Land Office then at Prescott, Arizona, his application under the mining laws of the United States for a patent for the said alleged Cape Horn Lode Mining Claim embracing the said specifically described piece of land, and that after due and proper notice to the said Cameron a hear-

ing was had at which he appeared and introduced evidence in support of his alleged claim and his application for a patent thereto, and that thereafter and on February 11th, 1909, the Secretary of the Interior, after full consideration of the evidence taken at such hearing, held that no discovery of mineral had been made within the boundaries of the said alleged Cape Horn Lode Mining Claim and that the land embraced therein is not mineral in character, and rejected the said application for patent and held the said mining location to be null and void and that the said piece of ground was a part and parcel of the said Grand Canyon National Monument; that thereafter, and on November 29th, 1911, the First Assistant Secretary of the Interior denied a motion for review of the decision of February 11th, 1909, and that on April 3d, 1912, the General Land Office declared the decision of the Secretary of the Interior of February 11th, 1909, to be final, and finally annulled the location of the said Cape Horn Lode Mining Claim and declared the land covered thereby to be a part of the aforesaid Grand Canyon National Monument; that subsequently, and on July 28th, 1914, the said Cameron, in an attempt to reopen the matters and questions theretofore finally determined in the said proceedings before the Interior Department, filed with the Register and Receiver of the United States Land Office at Phoenix, Arizona, a second application under the mining laws of the United States for a patent for the said Cape Horn Lode Mining Claim, and that thereafter, on August 4th, 1915, the Secretary of the Interior held that by

reason of the previous decisions of the Interior Department that have been mentioned the said Cape Horn Lode Mining Claim had no legal existence and finally denied the said second application for patent therefor; that notwithstanding the aforesaid proceedings in and decisions of the Department of the Interior, the said defendant Ralph H. Cameron has continued to assert a right to the exclusive use and occupancy of the ground included within the said mining claim, thereby preventing the Government, its officers and agents, from constructing on the said land improvements such as walks, railings, seats, etc., which are greatly needed for the convenience and protection of the public, and by reason of suits instituted, and threats made, and violence offered by the said named defendant and others of the defendants to the suit, persons holding or desirous of securing permits from the Government to occupy and use, in conformity with the rules and regulations governing such use and occupancy, have been prevented from going on or occupying the said land and have been forcibly ejected therefrom; that the said defendants have constructed on said land of the Government and on and near the said rim of the canyon numerous buildings within the said Tusayan National Forest, and with the exception of two of the buildings occupied by the defendant B. A. Cameron all of them are within the Grand Canyon Forest Reserve; that some of the buildings were constructed by the defendants B. A. Cameron, L. L. Ferrall, and S. D. Pepin subsequent to and notwithstanding the aforesaid decisions of the Department

of the Interior, and that in the said buildings the said defendants have been and still are conducting livery and other business enterprises, and have permitted to accumulate around them and on and near the rim of the canyon large deposits of stable manure, garbage, and other refuse, to the great annoyance and discomfort of the public visiting the canyon and thereby greatly detracting from the scenic beauties thereof.

The Court having denied a motion made by the defendants for the dismissal of the bill on the ground that the matters therein alleged did not constitute any ground for equitable relief and that the defendants were entitled to a trial on the law side of the court, the defendants filed an answer denying the alleged ownership of the complainant and alleging that the defendant, Ralph H. Cameron, duly located the ground in controversy as the Cape Horn Lode Mining Claim on the 10th of April, 1902, within the boundaries of which he made a discovery of mineral, and admitted his subsequent application to the Government for a patent to the ground, against which protest was made, and that a hearing thereof was had at which the said Cameron appeared and introduced evidence to sustain his application, and admitted the various decisions against him by the officers of the Department of the Interior, but alleged that the said decisions were without the jurisdiction of the officers and were null and void; and as a separate defense alleged that he had lawfully located the ground and prior and subsequent to such location had made lawful discovery of mineral

therein and had performed the annual assessment work thereon to and including the year 1915, and had complied with all of the laws relating thereto in every particular, and that the Government claimed some right adverse to his alleged title, which he prayed to be adjudicated and that he be declared to be the owner of and entitled to the possession of the said ground by virtue of his said mining claim, to which separate defense the Government interposed no plea.

On the trial the defendants offered the testimony of certain witnesses taken in a certain case entitled Cameron vs. Bass in the Superior Court of Coconino County, Arizona, for the purpose of sustaining the allegations of their answer, objections to which, according to the stipulation of counsel, were made on the ground that the court was concluded by the decisions of the Department of the Interior denying the said application and annulling the said mining location, which objections were sustained by the Court and the decree appealed from thereupon rendered.

ROSS, Circuit Judge, after stating the case:

In effect, the contention here made on behalf of the appellants is that the Secretary of the Interior was without authority to find as a fact that the locator of the alleged mining ground never made any discovery of mineral therein, and that the ground was not mineral land, nor any authority to cancel or hold void a lode mining location or claim, and that therefore the defendants to the action were entitled to introduce testimony in the court below to show

that the ground in controversy is mineral land and was properly located by the appellant Ralph H. Cameron; and further, that the defendants were entitled to a jury trial upon the question of title to the ground in question.

The argument of counsel is that while the Land Department, of which the Secretary of the Interior is the head (Rev. Stats., secs. 441, 453, 2478), had authority to grant or reject the application of the locator of the mining claim for a patent, it had no "authority whatsoever to destroy or in any way interfere with the separate, distinct, and independent title already held by the locator under his location, or to determine whether or not the locator had performed the acts necessary to constitute a valid location. A title being claimed in good faith, the Courts and not the Secretary or Land Department, have the exclusive right, power, and jurisdiction to determine whether such title exists or not."

We think there is no merit in any of the contentions referred to or in the argument made in support of them. The application here in question was made under and in pursuance of the provisions of section 2325 of the Revised Statutes. No adverse claim on the part of any other mineral claimant, authorized by section 2326 of the same statutes, was, so far as appears, interposed. But on the hearing of Cameron's application much testimony on the part of the claimant, as well as on the part of the Government, appears to have been given before the officers of the Land Department respecting the character of the land applied for, and its location, some

of it of a conflicting nature, the decision of which questions was not only within the jurisdiction of the Land Department, but within its exclusive determination. It is altogether too late to contend to the contrary, for nothing is better settled than that the facts in respect to the character of public land applied for under the laws authorizing its disposition, as well as the facts in respect to the performance of the acts required by the law to be performed by the applicant, are for the exclusive determination of the Land Department. Very many decisions of the Supreme and other Federal courts to that effect might readily be cited, but we think it needless to do so. And even though it be conceded that the Land Department was without jurisdiction to order, as it did in the instant case, the cancellation of the applicant's mining location, yet its determination of the fact that the ground applied for was not mineral land in effect cut up by the roots every step taken by the applicant under the mining laws, necessarily including his mining location; and such was the decision of the Supreme Court of Arizona in the case of Cameron vs. Bass, 168 Pac. 645, regarding, in part, the very ground here in controversy.

But in the case of Clipper Mining Company vs. Eli Mining & Land Company, 194 U. S. 220, 223, the Supreme Court expressly declared that the Land Department has the power to set aside a mining location and restore the ground to the public domain—saying, on page 223 of the volume cited:

" 'The judgment of the department in the Searl placer case went only to the extent of re-

jecting the application for patent. The department did not assume to declare the location of the placer void as contended by counsel, nor did the judgment affect the possessory rights of the contestant to it.' 22 L. S. 527. So far as the record shows—and the record does not purport to contain all the evidence—the placer location is still recognized in the department as a valid location. Such also was the finding of the Court, and being so there is nothing to prevent a subsequent application for a patent and further testimony to show the claimant's right to one. Undoubtedly when the department rejected the application for a patent it could have gone further and set aside the placer location, and it can now, by direct proceedings upon notice, set it aside and restore the land to the public domain."

It is contended by counsel for the appellants that what was there said by the Court was mere *dictum;* we do not so understand it, but even so, this Court observed regarding a like contention in the case of Daniels vs. Wagner, 205 Fed. 238:

> "It is urged that this language of the Court is *dictum,* but we do not so regard it. It contains the reasoning of the Court in determining the nature of the rights of the complainant in that case. But if, indeed, it is true that the expression of such views was unnecessary to the determination of the case which was before the Court, the language used sets forth the mature and unanimous judgment of the members of

that court on the question of law which is involved in the case at bar, and we deem it controlling in the decision of the present case."

The judgment is affirmed.

[Endorsed]: Opinion. Filed May 6, 1918. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3001.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Decree U. S. Circuit Court of Appeals.

Appeal from the District Court of the United States for the District of Arizona.

This cause came on to be heard on the transcript of the Record from the District Court of the United States for the District of Arizona and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, affirmed.

[Endorsed]: Decree. Filed and entered May 6, 1918. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3001.

RALPH H. CAMERON et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Stipulation and Order Staying Issuance of Mandate to and Including July 6, 1918.

IT IS HEREBY STIPULATED AND AGREED, by and between the parties to this action, that the issuance of the Mandate herein may be stayed for thirty days from and after June sixth, 1918, to the end that the counsel for appellants may have additional time to determine whether they will pray an appeal to the Supreme Court of the United States from the judgment and decree rendered by the above-entitled court on May sixth, 1918, it appearing that associate counsel have recently been retained by appellants, who desire time to familiarize themselves with the litigation.

Dated Tucson, Arizona, May 29th, 1918.

ROBT. E. MORRISON,
J. E. MORRISON,
Solicitors for Appellants.
THOMAS A. FLYNN,
United States Attorney for Arizona.
JOHN H. LANGSTON,
Assistant U. S. Atty.

San Francisco, California, May 31, 1918.
So ordered.

WM. H. HUNT,
United States Circuit Judge.

[Endorsed:] Stipulation and Order Staying Issuance of Mandate. Filed May 31, 1918. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3001.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Petition for Appeal to Supreme Court of the United States.

To the Honorable United States Circuit Court of Appeals for the Ninth Circuit, or Any Judge Thereof:

Now come the appellants, Ralph H. Cameron, Niles J. Cameron, B. A. Cameron, S. D. Pepin, and L. L. Ferrall, by their solicitors, and complain that in the records and proceedings and also in the rendition of the decree of the United States Circuit Court of Appeals, for the Ninth Circuit, sitting at San Francisco in the State of California, in the above styled and numbered cause, on the 6th day of May, A. D. 1918, affirming the decree of the United States District Court for the District of Arizona in said cause, manifest error has intervened to the great damage of the petitioners; that the jurisdiction of the District Court of the United States for the District of Arizona, depended upon the fact that the United States of America brought the said action as complainant in the said United States District Court for the District of Arizona; that the decision and decree of the United States Circuit Court of Appeals for the Ninth Circuit is not made final by law, and that, therefore, an appeal lies therefrom to the Supreme Court of the United States, the amount in controversy exceeding the sum of one thousand dollars ($1,000.00) besides costs.

WHEREFORE, petitioners pray for an allowance of the appeal, to the end that the case may

be brought to the Supreme Court of the United States, and petitioners pray for a supersedeas of said judgment, and for such other process as is required to perfect the appeal prayed for, to the end that the error therein may be corrected.

ROBT. E. MORRISON,
J. E. MORRISON,
Solicitors for Appellants.

Appeal and supersedeas allowed, and bond fixed in the sum of —— dollars ($——), conditioned as the law directs, this the —— day of July, A. D. 1918.

_____,
Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: Petition for Appeal to Supreme Court of the United States. Filed July 3, 1918. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3001.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Assignment of Errors on Appeal to Supreme Court of the United States.

Now come the appellants in the above-entitled cause, and file the following assignment of errors upon which they will rely upon their prosecution of the appeal of the above-entitled cause from the decree made by this Honorable Court on the 6th day of May, 1918:

I.

That the United States Circuit Court of Appeals, for the Ninth Circuit, erred in sustaining the action of the United States District Court for the District of Arizona, in overruling the motion to dismiss, interposed by the defendants and appellants to the complaint filed in this cause, for the reason that the allegations in said complaint contained do not state or allege facts sufficient to constitute a cause of action in equity against the defendants, or either of them, or to constitute sufficient grounds in equity for the relief prayed for in the said complaint, as it appears upon the face of said complaint that the Secretary of the Interior, without any power or authority of law whatsoever, and possessing no functions so to do, assumed to make certain pretended findings, judgments, orders, and decisions, purporting to cancel and annul a mining location, to wit: The Cape Horn Mining Claim, fully described in the answer of defendants; and further, holding the land embraced within the boundaries of the said Cape Horn Mining Claim to be a part and parcel of the Grand Canyon National Monument.

II.

That the United States Circuit Court of Appeals, for the Ninth Circuit, erred in sustaining the action of the United States District Court for the District of Arizona, in admitting in evidence, over the objection of the defendants, the certified copies of the opinions, decisions, orders, and adjudications of the Secretary of the Interior of the United States, which purported to cancel and annul the location of the Cape Horn Mining Claim, fully described in the bill of complaint and answer therein; and in holding and declaring said ground to be a part of the Grand Canyon National Monument, for the reason that the said Secretary of the Interior had no right, authority, or jurisdiction whatsoever, and possessed no function to annul or cancel the mining location known as the Cape Horn Mining Claim.

III.

That the United States Circuit of Appeals, for the Ninth Circuit, erred in sustaining the action of the United States District Court for the District of Arizona, in refusing the offer of the defendants to introduce the testimony of R. H. Hetherington, Ralph H. Cameron, S. D. Pepin, and Leo Kruskop, for the reason that the said testimony of the said witnesses would have tended to establish the validity of the said Cape Horn Mining location, as will fully appear from the transcript of said evidence submitted to the Supreme Court of the United States on this appeal.

IV.

That the United States Circuit Court of Appeals,

for the Ninth Circuit, erred in sustaining the action of the United States District Court for the District of Arizona, in rendering, making, and entering its final decree in this case, for the reason that the said decree is contrary to the law, particularly as the said decree is based in part (and practically entirely) upon the said decisions, findings, rulings, and orders of the said Secretary of the Interior, which were and are absolutely void and of no effect, the said Secretary of the Interior possessing no right, authority, power, jurisdiction, or function to make any such decisions, findings, rulings, and orders.

V.

That the United States Circuit Court of Appeals, for the Ninth Circuit, erred in sustaining the action of the United States District Court for the District of Arizona, in rendering, making, and entering its decree in this cause, because the same is contrary to the facts, which show, demonstrate, and prove that the said Cape Horn Mining claim, from the date of its location, to and including the date of the said decree, was and is a valid mining location.

VI.

That the United States Circuit Court of Appeals, for the Ninth Circuit, erred in sustaining the action of the United States District Court for the District of Arizona, in overruling defendants' motion for a new trial, for the reasons set forth in each and all of the foregoing assignments.

WHEREFORE, appellants pray that said decree be reversed, and that said United States Circuit

Court of Appeals for the Ninth Circuit be ordered to enter a decree reversing the decision of the lower court in the said cause.

ROBT. E. MORRISON,
J. E. MORRISON,
Solicitors for Appellants.

[Endorsed]: Assignment of Errors on Appeal to Supreme Court of the United States. Filed July 3, 1918. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

No. 3001.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Affidavit as to Amount in Controversy.

State of ——,
County of, ——, ss.

J. E. Morrison, being first duly sworn, deposes and says, that he is one of the solicitors for the above-named appellants; that the value of the matters in controversy in this cause, the same being the title to the Cape Horn Mining Claim, fully described in the record, is in excess of one thousand dollars

($1,000.00), and is of the value of not less than five thousand dollars ($5,000.00), exclusive of the costs of this litigation.

J. E. MORRISON.

Subscribed and sworn to before me this 29th day of June, A. D. 1918.

[Seal] O. A. KANE,
Notary Public.

My commission expires Apr. 11, 1920.

[Endorsed]: Affidavit as to Amount in Controversy. Filed July 3, 1918. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3001.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Order Allowing Appeal to Supreme Court of the United States and Fixing Amount of Bond.

On motion of J. E. Morrison, Esquire, solicitor and counsel for the above-named appellants,

IT IS HEREBY ORDERED, That an appeal to the Supreme Court of the United States from the

decree heretofore filed and entered herein be, and the same is hereby, allowed, and that a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings, be forthwith transmitted to said Supreme Court of the United States.

IT IS FURTHER ORDERED, that the bond on appeal be fixed at the sum of five thousand dollars ($——), the same to act as a supersedeas bond, and also as a bond for costs and damages on appeal, and that the mandate of this Court upon the said decree be stayed until the further order of the Court.

WM. H. HUNT,
Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: Order Allowing Appeal to Supreme Court of the United States, and Fixing Amount of Bond. Filed July 3, 1918. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3001.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Bond on Appeal to Supreme Court of the United States.

KNOW ALL MEN BY THESE PRESENTS, That We, Ralph H. Cameron, Niles J. Cameron, B. A. Cameron, S. D. Pepin, and L. L. Ferrall, of Coconino County, Arizona, as principals, and Maryland Casualty Company, a corporation organized and existing under the laws of the State of Maryland, as surety, are held and firmly bound unto the United States of America, in the sum of five thousand dollars, lawful money of the United States, to be paid to it, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and each of our heirs, executors and administrators, by these presents.

Sealed with our seals and dated this 3d day of July, A. D. 1918.

WHEREAS, the above Ralph H. Cameron, Niles J. Cameron, B. A. Cameron, S. D. Pepin, and L. L. Ferrall, have prosecuted an appeal to the Supreme Court of the United States to reverse the judgment and decree of the United States Circuit Court of Appeals for the Ninth Circuit, in the above-entitled cause;

NOW, THEREFORE, the condition of this obligation is such, that if the above-named appellants, Ralph H. Cameron, Niles J. Cameron, B. A. Cameron, S. D. Pepin, and L. L. Ferrall, shall prosecute their said appeal with effect, and shall answer all damages and costs if they fail to make good their plea, then this obligation shall be void, otherwise to

remain in full force and effect; this bond being also a supersedeas bond in the amount specified in the order allowing said appeal.

RALPH H. CAMERON. (Seal)
NILES J. CAMERON. (Seal)
B. A. CAMERON. (Seal)
S. D. PEPIN. (Seal)
L. L. FERRALL. (Seal)
MARYLAND CASUALTY COMPANY.
(Seal)

[Seal] By A. W. CONNOLLY,
Attorney in Fact.

The within bond is approved as to sufficiency and form this third day of July, A. D. 1918.

WM. H. HUNT,
Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: Bond on Appeal to Supreme Court of the United States. Filed July 3, 1918. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3001.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3001.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Certificate of Clerk U. S. Circuit Court of Appeals to Transcript of Record upon Appeal to the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two hundred and twenty-seven (227) pages, numbered from and including 1 to and including 227, to be a full, true and correct copy of the record made pursuant to the praecipe filed by counsel for the appellants on the 15th day of July, A. D. 1918, under Rule 8 of the Supreme Court of the United States, in the above-entitled cause, including the Assignment of Errors on Appeal to the Supreme Court of the United States and of all proceedings had, and of all papers, including the Opinion filed in the said Circuit Court of Appeals in the above-entitled case, as the originals thereof remain on file and appear of record in my office, and that the same, together with the ac-

companying original exhibits, viz., Plaintiff's "A" to and including "K," constitute the transcript of record upon appeal to the Supreme Court of the United States in the above-entitled cause as made and certified pursuant to the said praecipe.

ATTEST my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, this 14th day of August, A. D. 1918.

[Seal] F. D. MONCKTON,
Clerk.
By Paul P. O'Brien,
Deputy Clerk.

Praecipe for Transcript of Record on Appeal to the Supreme Court of the United States.

To the Clerk of the said Court:

Sir: Please make and furnish me with a certified transcript of the record (including the proceedings had in said Circuit Court of Appeals), and not less than thirty uncertified copies thereof, for use on appeal to the Supreme Court of the United States in the above-entitled cause, the said transcript to consist of a copy of the following:

1. Printed Transcript of Record on which the cause was heard in said Circuit Court of Appeals, to which will be added a printed copy of the following entitled proceedings that were had, and of the papers that were filed in said Circuit Court of Appeals, viz.:

2. Order of Submission, entered Feb. 8, 1918;

3. Order Directing Filing of Opinion, etc., entered May 6, 1918;

4. Opinion, filed May 6, 1918;

5. Decree, filed and entered May 6, 1918;

6. Stipulation and Order Staying Issuance of Mandate, filed May 31, 1918;

7. Petition for Appeal to Supreme Court U. S.; filed July 3, 1918;

8. Assignment of Errors, filed July 3, 1918;

9. Affidavit as to Amount in Controversy, filed July 3, 1918;

10. Order Allowing Appeal and Fixing Amount of Bond, etc., filed July 3, 1918;

11. Bond on Appeal, filed July 3, 1918;

12. All Original Exhibits;

13. Praecipe for Transcript of Record;

14. Certificate of Clerk U. S. Circuit Court of Appeals to said Transcript;

15. Citation on Appeal, filed July 3, 1918.

J. E. MORRISON,
Counsel for Appellants.

Service of a copy of the within Praecipe is admitted this —— day of July, A. D. 1918.

THOMAS A. FLYNN,
Counsel for Appellee.

[Endorsed]: Praecipe for Transcript of Record on Appeal to Supreme Court of the United States. Filed July 15, 1918. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3001.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Citation on Appeal to Supreme Court of the United States.

United States of America,—ss.

To the United States of America, GREETING:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the thirty-first day of August, A. D. 1918, pursuant to an order allowing an appeal, filed and entered in the clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, from a final decree, signed, filed and entered, on the 6th day of May, A. D. 1918, in that certain suit in equity, No. 3001, wherein Ralph H. Cameron, Niles J. Cameron, B. A. Cameron, S. D. Pepin, and L. L. Ferrall, are appellants, and you are defendant and appellee, to show cause, if any there be, why the decree rendered against the said appellants as in said order allowing appeal mentioned, should not be cor-

rected, and why justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM H. HUNT, Judge of the United States Circuit Court of Appeals, for the Ninth Circuit, this third day of July A. D. 1918, and of the Independence of the United States, the one hundred and forty-second.

WM. H. HUNT,
Judge of the United States Circuit Court of Appeals, for the Ninth Circuit.

[Endorsed]: Citation on Appeal to Supreme Court of the United States. Filed July 15, 1918. F. D. Monckton, Clerk.

JAN 2 1920
JAMES D. MAHER,
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1919

No. 205

RALPH H. CAMERON, *ET AL.*, *Appellants*,

vs.

THE UNITED STATES OF AMERICA

BRIEF FOR APPELLANT

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JOSEPH E. MORRISON,
of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1919

No. 205

RALPH H. CAMERON, *ET AL., Appellants,*

vs.

THE UNITED STATES OF AMERICA

BRIEF FOR APPELLANT

STATEMENT

This was a bill in equity filed by the United States against Ralph H. Cameron *et al.* for injunction restraining the defendants from occupying, using, or asserting any claim or right to the occupancy, use, or possession of the land embraced in the Cape Horn lode mining claim, etc.

The theory of the bill was that the invalidity of said mining claim had been finally and effectively adjudicated by decisions of the land department on Cameron's application for patent therefor, and that the inclusion of the land in the alleged Grand Canyon National Monument had with-

drawn the same from further occupation and exploration under the mining laws.

The bill did not make any independent allegation that the mining claim was not supported by discovery or that it was otherwise defective or invalid.

Motions by the defendants to dismiss the bill for lack of equity, or to transfer the cause to the law side of the court for jury trial, were denied.

The defendants then answered denying that the decisions of the land department upon which the bill was founded were effective as adjudications of the invalidity of the mining claim, and setting up Cameron's possessory title thereto, and also setting up that the attempted creation of the alleged Grand Canyon National Monument was without authority and void.

Cameron filed a further answer in the nature of a cross-bill praying that his possessory title be quieted as against the United States.

At the trial the Government, as plaintiff, over objection submitted proclamations including the land in Forest Reserves, the proclamation purporting to create the Grand Canyon National Monument, and the departmental decisions on Cameron's applications for patent for the mining claim, and introduced the testimony of one witness as to buildings, etc., on the claim, and rested.

The defendants thereupon tendered the testimony of witnesses to prove the fact of discovery and compliance with the requirements of the Federal mining laws and local statutes, which tender was refused by the court upon the ground that the departmental decisions were binding upon the courts.

The court thereupon passed a decree for the plaintiff enjoining the defendants. The defendants appealed to the Circuit Court of Appeals for the ninth circuit, which

affirmed the decree of the District Court (see opinion, R. p. 203), and the case is now here on final appeal.

The documentary evidence introduced by the Government is set out in the Record at pp. 112 *et seq.*

It appears that on February 20, 1893, the land in question was embraced in a Forest Reserve, but under the laws authorizing the creation of Forest Reserves it still remained subject to occupation, exploration, location and purchase under the mining laws.

On April 10, 1902, Cameron located the Cape Horn Lode mining claim and on May 17, 1905, filed application for patent therefor.

Against the application for patent the Grand Canyon Railway Company filed a protest alleging that the land was non-mineral and a hearing was ordered and had before the local officers, at which the Railway Company offered evidence tending, as it claimed, to prove that Cameron was seeking patent to said mining claim and others along the Bright Angel Trail, with the ulterior purpose of controlling the use of the Trail. The local officers rejected the offer of such evidence and, upon the testimony as to mineral character and discovery, held the claim valid and recommended dismissal of the protest.

On appeal by the Railway Company the Commissioner reversed the decision of the local officers and held the application for rejection.

On appeal by Cameron to the Secretary a departmental decision was rendered on August 21, 1907 (36 L. D. 66), wherein the department took the novel position that, even though a mining location were supported by sufficient discovery, yet the department had power, upon application for patent, to inquire into the motive of the applicant and, if it found that the location was made and the application filed with the ulterior purpose or design of securing the

land for purposes other than mining, to reject the application and, accordingly, held that the evidence as to Cameron's intent to control the use of the Bright Angel Trail, tendered by the Railway Company and rejected by the local officers, was competent (a position from which the department later receded, Cataract Gold Mining Co. *et al.*, 43 L. D. 248, 251, 254), and remanded the case for further hearing.

Such action was, in effect, recognition that the sufficiency of discovery supporting the location was established by the evidence then before the department, for, if not, the department would then have affirmed the Commissioner's decision—there would have been no occasion for any further hearing.

As a matter of fact, Cameron's holding of the Cape Horn claim and others, and even securing patent therefor, could not have given him any power to control the use of the Trail. The Trail was an easement of right of way, 44 feet in width, which had been acquired under Federal and Territorial statutes and was the property of Coconino County to which easement the Cape Horn claim and others along the trail were subservient. The ownership of the trail by the county was recognized by the courts (Duffield v. Ashurst, 12 Ariz. 360, 100 Pac. 820; appeal dismissed for the reason that the franchise involved had expired, 225 U. S. 697) and has been recognized by Congress in the act of February 26, 1919 (40 Stat. 1175, 1178), creating the Grand Canyon National Park.

It will thus be seen that the department, in necessary effect, found the sufficiency of discovery to support the location established by the record before it, but remanded the case for a further hearing upon an obviously irrelevant issue. Needless to say, if the Railway Company had not then misled the department regarding the status of the Trail, the mining claim would have been patented.

The further hearing, however, was had and the Railway Company introduced its evidence supposed to tend to convict Cameron of an intent or purpose which it was impossible for him to accomplish.

The additional record was transmitted to the Commissioner who, on February 29, 1908, in turn transmitted it to the Secretary with recommendation that Cameron's applications be rejected because the mining claims were not shown to be of value for mining purposes, citing Brophy vs. O'Hare, 34 L. D. 586, where the department had announced the further novel proposition that—

> "To sustain the application for mineral patent, as against persons alleging the land to be non-mineral, it must appear that mineral exists in the land in quantity and of value sufficient to subject it to disposal under the mining laws. In other words, the land applied for must be shown to contain valuable deposits of mineral, which means more than a mere discovery that might be sufficient to support a location in the first instance."

But under the statute (U. S. R. S. 2325) the right to patent, upon compliance with the statutory requirements, is an incident of a valid possessory mining claim, irrespective of whether or not the locator has pursued his explorations to the point where he has developed a paying mine or demonstrated that the land is of greater value for mining than for any other purpose. This was later recognized in the case of the Cataract Gold Mining Co., *supra*, and the East Tintic case, 43 L. D. 79, and has been recognized by the courts. As said in U. S. vs. M'Cutchen, 238 Fed. 575, 584:

> "It is Hornbook law, of course, that the successful location or appropriation of mineral land of any sort, to be valid, must be accompanied by 'discovery.' * * *
> "In this behalf I can see no escape from the con-

> clusion that, as against the Government, if the defendants had made such a location or 'discovery' upon the land in question as to invest them with the right of property therein, they have made such location and 'discovery' as to entitle them, as a matter of law, and of right, to a patent. Conversely, if they have made no such discovery as to entitle them to a patent as against the Government, they have made no such discovery as to vest them with rights in and to the property. McLemore vs. Express Oil Co., 158 Cal. 559, 563, 112 Pac. 59, 139 Am. St. Rep. 147."

Shortly before the record reached the Secretary's office the President, by Proclamation of January 11, 1908 (R., p. 133), under assumed authority of the act of June 8, 1906, 34 Stat. 225, undertook to create the Grand Canyon National Monument and reserve from appropriation and use a large body of land, including the Cape Horn Mining Claim with the exception of a strip about 75 feet wide along the southern boundary thereof. Whether or not this Executive action was a valid exercise of the power conferred by the statute is a question in the case and will be considered later herein.

On February 11, 1909, the department rendered a decision (R. p. 140) wherein the evidence introduced by the railroad company as to Cameron's alleged purpose to control the Trail was not considered (at that time it had been pointed out to the department that the Trail was the property of Coconino County and was a dominant easement over the mining claims). In that decision the department announced (R. p. 148) that in its opinion the railway company by evidence in support of its protest had made out a *prima facie* case as against the *patentable mineral character* of the land and that it devolved upon the applicant to show affirmatively that such conditions were to be found as would justify a prudent man in the further expenditure

of his time and means with a reasonable prospect of developing paying mines upon the lode locations, and that, in determining that question, due consideration was to be given to the fact that the tracts included in the applications were within the exterior limits of the national monument. It was then said (R. p. 149) that it appeared that the claims at the rim (Cape Horn and Golden Eagle) were upon a formation of sedimentary origin, the principal stratum of which was a yellow limestone, and that (R. pp. 150-151)—

> "Upon this limestone formation to the south and also to the west, at varying distances from the locations mentioned, many other mining claims have been located, from a number of which valuable ores have been extracted, shipped and smelted. The mineral deposits so worked occur locally as concentrations in irregular fractures of the limestone, and derive their mineral contents of copper, accompanied by some iron, by a leaching process which has accumulated those minerals from the surrounding limestone, throughout which they are disseminated in minute quantities. The limerock adjacent to these local mineral concentrations has in some instances been also extracted in connection therewith, and shipped to the smelters, for the reason that it furnishes a desirable flux in the smelting charge. It is stated that if the copper contents were associated with quartz or silica in place of the limestone, the cost of reduction by smelting would be approximately $15 more per ton of material treated. The nearest claims to the Golden Eagle and Cape Horn locations, from which ores out of this bed of limestone have been extracted and shipped, are from four to five miles distant. On the Captain Burro claim, owned by Cameron, distant about one-half mile west from the head of the trail, an open cut in the limestone along an irregular fracture has disclosed considerable copper bearing rock, and a sample assayed showed gold, a trace, silver 2.4 oz. per ton, and copper 20.5 per cent. *The best assay returns from the Cape Horn*

showed gold, a trace, silver, 1.8 oz., copper 12.5 per cent, and from the Golden Eagle gold, a trace, silver 1 oz., and copper 8.6 per cent.

"Mr. Claypool, on cross-examination, said in reference to these two claims on the rim that Mr. Cameron had not been fortunate enough to find one of those places containing the larger quantity of higher grade material. He further stated in reference to assays mentioned in the testimony, that—

" 'These samples which show sufficiently high grade to justify shipment to foreign smelting works are selected and do not represent the entire mass of rock exposed on the various faces of the openings inspected.' "

And (R. pp. 152-153):

"It is shown by the evidence that from no one of the four locations involved has any material or ore been taken out and shipped for smelting or other treatment, save for assaying only, which gave the maximum results above indicated. The company's assay returns from thirteen samples from the claims [four] indicated nothing in either gold, silver, or copper, except one in which copper .4 per cent appeared, and in two, a trace. In many of the assays on behalf of the applicant, the results were gold, a trace; silver, a trace to 1.4 ounces; and copper nothing.

"Assay returns such as these, considered in connection with all the circumstances here disclosed, wholly fail to establish the *actual mineral character of the lands involved.*

"It is not pretended that the applicant has as yet actually disclosed any body of workable ore of commercial value; nor does the evidence reveal such indications and conditions as would warrant the belief or lead to the conclusion that valuable deposits are to be found, save, apparently, in the case of the Magician lode claim. With that possible exception, the probabilities of such deposits occurring are no stronger or more evident at the present time than upon the day

the claims were located. *The evidence wholly fails to show that there are veins or lodes carrying valuable and workable deposits of gold, silver, or copper, or any other minerals within the limits of the locations.* Sufficient time has elapsed since these claims were located for a fair demonstration of their mineral possibilities. *The most that can be said is that such mineral stains, streaks and indications have been encountered as would suggest the possibility of the existence of mineral deposits of value in the formations described; but that such deposits do in fact exist cannot be reasonably inferred from the evidence adduced, much less can their existence be predicated upon the showing presented.*

Further examination and discussion of the evidence upon this phase of the case would subserve no useful purpose."

The department then considered the question as to what is necessary to constitute a discovery of mineral and, after referring to cases in this court where the question was what constitutes a known lode excepted from placer patent, and Chrisman vs. Miller, 197 U. S. 313, and finally quoting from Brophy vs. O'Hare, *supra*, concluded (R. p. 158):

"Upon the entire record, viewed and interpreted in the light of the leading authorities on the subject, *the department is clearly of the opinion that the land is not shown to possess such mineral character and values as to justify the land department in awarding the desired patent.*"

And (R. pp. 159, 160):

"It follows from the foregoing that each of Cameron's applications for patent (Nos. 714, 715 and 716) must be rejected and canceled, and it is so ordered.

"It is the further result of the evidence, and the Department holds that the several mining locations,

with the apparent exception of the Magician lode claim, do not stand upon such disclosures or indications of valuable mineral in rock in place therein, prior to the establishment of the National Monument and the withdrawal of the lands therein embraced, as to bring them within the saving clause of the Executive order. The right of Cameron to continue possession or exploration of those claims is hereby denied, and the land covered thereby is declared to be and remain part of the Grand Canyon National Monument, as if such locations had not been attempted."

It is submitted that it appears upon the face of this decision that the department proceeded upon a misconception of the law as to discovery in that it applied the erroneous doctrine of Brophy vs. O'Hare, *supra*, in respect of the quantity and quality of mineral showing necessary to entitle to patent as distinguished from the quality of discovery sufficient to validate a location and vest possessory title, and rejected Cameron's application and attempted to declare the location void, not because of lack of discovery sufficient to validate the location, but because he had not gone further and developed a "known mine" as a condition precedent to the department's conceding him a patent or recognizing his claim as "a prior valid adverse claim" within the meaning of the proclamation purporting to create the alleged Grand Canyon National Monument.

On June 10, 1909, the department entertained a motion for review of its decision of February 11, 1909, and under date of January 9, 1911, directed a field investigation of the mining claims to be made by a geologist of the Geological Survey.

The report of the geologist was thereafter received and under date of November 29, 1911, the department rendered a further decision (R. pp. 161 *et seq.*) denying the motion for a review as to the Cape Horn claim. In that

decision the department recognized (R. pp. 163, 166) that the report of the geologist was not competent as evidence in the case, so that this further action as to the Cape Horn claim was based upon the evidence submitted at the two hearings, and was merely adherence to the previous ruling.

Under date of April 3, 1912, the Commissioner in a communication to the local officers (R. pp. 168 *et seq.*) promulgated the Secretary's decision, saying (pp. 169-170):

> "In view of the foregoing, said departmental decision of February 11, 1909, becomes final, and said mineral applications 714, 715 and 716, are hereby rejected and canceled, as to the locations and millsites applied for, except as to said Magician lode claim, and so noted on the records of this office, thus closing the case as to said 715 and 716, and as to the Alder millsite of said 714. The right of Cameron to continue possession or exploration of the claims, hereby rejected and canceled, is finally denied, and the land covered thereby declared to be and remain part of the Grand Canyon National Monument, and will be administered as such."

Thereafter, on July 28, 1914, Cameron filed a second application for patent for the Cape Horn Claim (R. pp. 171 *et seq.*). In the decision of March 23, 1915 (R. pp. 176 *et seq.*), the Commissioner, after reciting the proceedings on the first application, said (R. pp. 182-183):

> "It is evident from the above that mineral application 025503 has no substantial basis; but is merely an attempted reinstatement of the location heretofore vacated, annulled and declared invalid, the status of which as non-mineral was effectually and finally fixed by the departmental decision of February 11, 1909, and its subsequent affirmation, on November 29, 1911, as to all portions, at least, of said location within the Grand Canyon National Monument, in which, also, the claimed discovery was included.

"Since April 3, 1912, the date on which this office carried into effect the mandate of the department by rejecting and cancelling Prescott mineral application 716, now Phoenix serial 05217, no attempt at relocation appears to have been made; nor was any such possible as to any part of said Cape Horn claim within the National Monument.

"To support a mineral application, a valid and subsisting mineral location is the prime requisite. In the case presented, the location has been declared void and invalid by the department, has been annulled and set aside, and has no further force and effect. It is, therefore, neither valid nor subsisting, and this office is without jurisdiction to allow an application for patent supported and based thereon.

"In view thereof, mineral application 025503, for the Cape Horn lode, survey 2023, is hereby rejected, subject to the usual right of appeal. You will allow the applicant thirty days from notice within which to appeal, in default whereof, the rejection will be made final without further notice."

On appeal the department rendered decision under date of August 4, 1915 (R. pp. 184 *et seq.*), wherein, after reciting the proceeding on the first application, it was said (pp. 186-187):

"It thus appears from the foregoing that as the result of a hearing had *after* [sic] the creation of the national monument, the department expressly found that no discovery of mineral had been made within the limits of the Cape Horn location, and that there was no evidence before the department showing the existence of any valuable deposits or any minerals within the limits of the location.

"As a result of said decisions the then pending application was finally rejected and canceled, and the records appropriately noted, pursuant to Commissioner's letter of April 3, 1912.

"As pointed out in the Commissioner's decision of

March 23, 1915, with respect to the present application, the latter is based upon the same locations as the first application, fully considered by the department in the decisions described. So far as the portions of the claim included within the exterior limits of the national monument is concerned, no discovery which would defeat the said monument can have been made since the date of the previous hearing in this case, nor do I find that one is claimed to have been made since the former decision in any part of the alleged location. The present application, therefore, in effect, constitutes an attempted reinstatement of the application heretofore rejected and canceled. It is supported by no showing of error in the previous decisions of the department, nor does it point out any evidence that was overlooked therein. Under the circumstances, this department must conclude that the present application has no valid basis and cannot be allowed. For this reason the action of the Commissioner is affirmed."

It will be observed that the first paragraph quoted is merely a recital wherein the department places a construction (which we submit was erroneous) upon its previous ruling. The previous decision did not hold that no discovery of mineral had been made. It expressly recognized that the claim was located on a mineral-bearing lime formation and that mineral in substantial quantity had been disclosed, but, through misconception of the law, as we submit, held that it was not of a quality warranting the patenting of the claim or recognition of the location as a prior valid adverse claim within the meaning of the proclamation purporting to create the alleged Grand Canyon National Monument.

The land department having thus refused Cameron a patent and undertaken to declare his location void, the Department of Agriculture, then in charge of the administration of the Forest Reserve, caused this suit immediately to

be brought in the name of the United States for the purpose of ousting Cameron and occupants under him, and the courts below have held that the action of the land department was binding upon them.

The land department, however, as suggested before, later receded from the position taken in Brophy vs. O'Hare and in this Cameron case. Under present rulings of the department the showing of mineral on this Cape Horn claim, as disclosed by the department's decision of February 11, 1909, *supra,* would be recognized as validating the location and, therefore, as entitling to patent. Cataract Gold Mining Co., *supra;* Jefferson-Montana Copper Mining Co., 41 L. D. 320; Rough Rider Case, 42 L. D. 584; and East Tintic case, 43 L. D. 79.

Cameron has thus been the victim of a temporary swing of departmental policy toward extreme strictness in respect of mineral showing to entitle to patent and desire of the Railway Company and two departments of the Government to oust him; and the courts below have held that they were bound by the ruling of the land department, right or wrong.

There is thus presented the fundamental question whether or not such action of the land department can be binding upon the courts and deprive the mineral claimant of the right of a judicial determination of the question of the validity of his possessory title, and the further question whether, in any event, the action of the land department in question is, upon its face, erroneous as a matter of law and for that reason, irrespective of the broader one, not entitled to judicial recognition.

ARGUMENT

I

THE ACTION OF THE LAND DEPARTMENT IN UNDERTAKING TO DECLARE CAMERON'S LOCATION AND POSSESSORY TITLE VOID WAS NOT A JUDICIAL ACT AND NOT BINDING ON THE COURTS.

We submit that this necessarily follows from the following indisputable propositions:

1. Possessory title to a mining claim is acquired under the United States mining laws wholly independently of the land department.

2. Such title has the quality of a grant from the United States and is property in the highest sense of the term.

3. While, upon application for patent for a mining claim, the land department *ex necessitate* must pass upon the validity of the location, it does so administratively and not judicially.

4. In case the department refuse patent, its action is not conclusive, final, or binding, even as to itself. The same or a succeeding administration may review the case and issue patent. *Vide* Rough Rider and East Tintic cases, *supra.*

5. Where the land department, rightly or wrongly, denies patent to an applicant, without issuing patent to an adversary applicant, the effect is merely to wipe the application from the land records *pro tempore.* If the land remain undisposed of the department may afterward review its ruling, reinstate the application or entry, and grant patent.

6. Where, as here, the land department undertakes to go further and declare void the location upon which an

application for mineral patent is predicated, such action is likewise not conclusive, final, or binding, even as to itself. The same or a succeeding administration may likewise revoke such declaration or make a declaration to the contrary.

7. The land department is without power to enter a judgment of ejectment or in any manner to execute such an attempted declaration of illegality of a possessory mining claim.

8. Congress has not empowered the land department to pass upon the validity of a possessory mining claim otherwise than as involved in the actual issuance of patent to the claimant or an adversary claimant, and, then subject to limitations. Nor has Congress given the courts power, or imposed upon them the duty, of enforcing a mere declaration by the land department of the invalidity of a possessory mining claim (not merged into disposition of the title to the land by issuance of patent to another), even assuming, for the sake of the argument, that Congress would have the power so to legislate.

9. It is only by the issuance of patent that action of the land department becomes effective, and then within limitations recognized by the courts.

10. The rule that decisions of the land department upon questions of fact are binding upon the courts is raised as an incident of, and in support of the integrity of patent, recognizes that action by the land department upon applications for patent for public land is not judicial but administrative, and is based upon the assumption that Congress, in vesting the land department with administration of the laws governing the disposition of the title to public lands, conferred upon it the power and duty of deciding questions of fact involved in the granting of patents.

11. And the rule that decision by the land department of questions of law involved in the issuance of patent is not

binding upon the courts, is recognition that the department acts administratively and not judicially.

DICTA IN CLIPPER MINING CO. V. ELI MINING CO.

Support for the action of the land department and the courts below is sought in *obiter dicta* of Mr. Justice Brewer in delivering the opinion of this court in Clipper Mining Company vs. Eli Mining & L. Company, 194 U. S. 220.

The Clipper-Eli case involved ground in the town of Leadville, Colo. Back in the early days the people of the town, through the county judge, applied to enter the ground as a townsite. One Searl, claiming the Searl placer, embracing the same ground, filed protest. A hearing was had and, finally, by departmental decision of April 17, 1880 (7 Copp's Land Owner, 36), it was held that the Surveyor General's return as to the mineral character of the land had not been overcome, and the townsite application was rejected.

Thereafter Searl applied for patent for the Searl placer and on a report of a special agent and representations of residents of Leadville that the ground was not placer, another hearing was ordered to ascertain the character of the land and the status of all existing claims and interests. Upon the evidence adduced the local officers found that the land was not distinctively valuable for placer mining and that the placer claimant had not done the required amount of work to entitle to patent. On Searl's appeal the Commissioner affirmed the local officers. On appeal to the Secretary it was held (11 L. D. 441, 442) that the testimony by a fair preponderance established the fact that continued prospecting for several years had failed to disclose in any appreciable quantity the presence of valuable placer material in the claim or to establish, as a then present fact, within the meaning of section 2329 R. S., the placer character of the land, and Searl's application was rejected.

It will be observed the departmental decision was based solely on the finding of absence of placer discovery and non-placer character of the ground. without reference to the question of the sufficiency of improvements.

Thereafter the Clipper Mining Company filed application for patent for four lode claims in the same ground. Adverse claim was filed by the Eli Mining Company, as then owner of the Searl placer, and suit instituted by it in support thereof.

The Clipper Mining Company, contending that the decision in 11 L. D., *supra,* had finally disposed of the Searl placer, applied to make entry notwithstanding the adverse claim and suit. The matter went to the Secretary who held (22 L. D. 527, 528) that the adverse suit *pro tempore* ousted the department of jurisdiction, and added :

> "The judgment of the department in the Searl placer case went only to the extent of rejecting the application for patent. The department did not assume to declare the location of the placer void, as contended by counsel, nor did the judgment affect the possessory rights of the contestant to it."

It is obvious, however, that the decision in 11 L. D. did in fact hold the placer void and rejected the application for patent for that reason; and this language in 22 L. D. can be understood only as recognition by the department that the effect of the finding that the placer location was void, was only to reject the application for patent. At that time it was universally understood that the department was without function to do more in such case than to reject the application.

The adverse suit went to trial. The trial court found that the placer was a valid location, that the location of the lode claims was trespass, and that the lode claims were, therefore, void, and entered judgment for the placer claim-

ant, which was affirmed by the Supreme Court of Colorado. The case then came to this court, which affirmed the judgment below (Fuller, C. J., and White, J., dissenting). Mr. Justice Brewer delivered the opinion of this court, and in disposing of the contention that the ruling of the land department that the Searl placer location was void, was conclusive in the courts, said (pages 222-3):

> "It is the settled rule that this court, in an action at law at least, has no jurisdiction to review the conclusions of the highest court of a State upon questions of fact. * * * It must, therefore, be accepted that the Searl placer claim was duly located, that the annual labor required by law had been performed up to the time of the litigation, that there was a subsisting valid placer location, and that the lodes were discovered by their locators within the boundaries of the placer claim subsequently to its location. So the trial court specifically found, and its finding was approved by the Supreme Court.
>
> "As against this, it is contended that the land department held that the ground within the Searl location was not placer mining ground, nor subject to entry as a placer claim, that such holding by the department must be accepted as conclusive in the courts, and therefore that the tract should be adjudged public land and open to exploration for lode claims and to location by any discoverer of such claims. It is true that the Commissioner of the General Land Office, in rejecting the amended application for the placer patent, said that he was not satisfied that the land was placer ground or that the requisite expenditure had been made, and further that the locators had not acted in good faith, but were attempting to acquire title to the land on account of its value for townsite purposes and for the lodes supposed to be contained therein. This decision was affirmed by the Secretary of the Interior; but notwithstanding this expression of opinion by these officials, all that was done was to reject the application for a patent. As said thereafter

by the Secretary of the Interior upon an application of the Clipper Mining Company for a patent for the lode claims here in dispute:

"'The judgment of the department in the Searl placer case went only to the extent of rejecting the application for patent. The department did not assume to declare the location of the placer void, as contended by counsel, nor did the judgment affect the possessory rights of the contestant to it.' 22 L. D. 527.

"So far as the record shows—and the record does not purport to contain all the evidence—the placer location is still recognized in the department as a valid location. Such also was the finding of the court, and being so there is nothing to prevent a subsequent application for a patent and further testimony to show the claimant's right to one. Undoubtedly when the department rejected the application for a patent it could have gone further and set aside the placer location, and it can now, by direct proceedings upon notice, set it aside and restore the land to the public domain. But it has not done so, and therefore it is useless to consider what rights other parties might then have."

And (page 232):

"We must not be understood to hold that, because of the judgment in this adverse suit in favor of the placer claimants, their right to a patent for the land is settled beyond the reach of inquiry by the Government, or that the judgment necessarily gives to them the lodes in controversy."

And (page 234):

"The land office may yet decide against the validity of the lode locations and deny all claims of the locators thereto. So also it may decide against the placer location and set it aside, and in that event all rights resting upon such location will fall with it."

With all due respect we submit that there was here misconception and confusion of thought regarding the action of the department in the Searl placer case and that the language—

> "Undoubtedly when the department rejected the application for the patent it could have gone further and set aside the placer location, and it can now, by direct proceedings upon notice, set it aside and restore the land to the public domain,"

which the land department has now seized upon as recognizing jurisdiction in it to declare judicially, and not merely administratively, the invalidity of a possessory mining title, was pure *obiter* and improvident.

In the first place, the decision of the Commissioner of the General Land Office was not the effective ruling of the department. While the Secretary affirmed the Commissioner's action in holding the application for rejection, the sole ground of the Secretary's decision, which became the effective departmental action, was the finding that there had not been placer discovery and that the land was non-placer in character.

This court, however, seems to have assumed that the department left the matter of the validity of the placer claim in doubt and that, therefore, there was no foundation for the contention of counsel that the department had held the Searl placer invalid.

The land department, however, did, by the finding of the Secretary, hold the Searl placer location invalid and, therefore, not patentable; but, as noticed before, the department itself, in 22 L. D., *supra,* recognized that such judgment by it extended in operation only to rejecting the application for patent.

The further suggestion of this court that, so far as the record showed, the placer location was still recognized

in the department as valid, is paradoxical. As noticed before, the validity of location and right to patent are identical (speaking, of course, only to the question of discovery supporting the location), and rejecting the application for patent because of the finding that the location was invalid for want of discovery was the equivalent of a judgment in form that the location was invalid. But, as noticed before, the department in 22 L. D., *supra*, recognized that its action was only administrative and, therefore, went only to the matter before it for action, viz., the application for patent.

It is true, as suggested by this court, that there was nothing to prevent a subsequent application for patent and further testimony to show the claimant's right to one. As noticed before, action of the department rejecting an application is not, unless patent issue to another, conclusive, final, or binding, even as to itself. It might have reviewed the Searl placer case and granted patent upon the original record. In any event, its action was based on the facts existing at the time of the hearing and shown by the record then before it. There was nothing to prevent a new application and showing of discovery made subsequent to the former hearing.

But certain it is that at the time of the decision in 11 L. D., *supra*, the Searl placer was by the department regarded as, and declared to be, an invalid location.

In the final analysis, therefore, the ruling of this court was that the finding by the department of invalidity of the Searl placer location was not conclusive in the courts.

Inasmuch as Congress had not given the department jurisdiction over possessory mining claims otherwise than as they might be involved in proceedings upon application for patent by an adversary applicant, the suggestion of this court that,

> "Undoubtedly when the department rejected the application for the patent it could have gone further and set aside the placer, and it can now, by direct proceedings upon notice, set it aside and restore the land to the public domain."

was understood by the mining world as meaning that the department might have reinstated the townsite application and granted patent thereon, which, in effect, would have set aside (or rather invalidated) the alleged placer location; and that by "direct proceedings upon notice" was meant the ordinary proceedings upon application for patent by an adversary applicant. In such case, the issuance of patent to the adversary applicant would be the effective act which would operate, not to set aside the location and restore the land to the public domain (for that phraseology recognizes the claim as having had vitality), but as a finding that the location had not vitality and that the land had not thereby been segregated from the public domain. As noticed before, it is the issuance of patent to another that gives vitality as adjudication (within limitations before noticed) to action of the land department in deciding against the defeated party.

And this was also the department's understanding. After the decision in this court the controversy was resumed in the land department, and in decision of June 27, 1905 (Clipper Mining Co. vs. Eli Mining & L. Co., 33 L. D. 660), Secretary Hitchcock said (pp. 665-6):

> "From the foregoing statement of the case it will be observed that the four lode claims here involved were located several days after the rejection by the department of the application for placer patent; and the lode locations are alleged by petitioner to have been made and maintained upon faith of the decision in that instance, as within the exclusive province of the land department and as conclusive of the placer

question, as well as upon the locators' knowledge of the lode character of the ground. It is insisted by petitioner that, notwithstanding the concluding expression of the department, above quoted, in its decision of May 13, 1896, respecting the effect of the decision of November 13, 1890, rejecting the placer application, the earlier decision was unavoidably a determination of the invalidity of the placer location, since a valid location of that character cannot be made on non-placer ground.

The conclusion thus drawn is unsound. In order to comprehend the effect of the decision in question it must be borne in mind that the direct object of attack, in the proceedings which the decision closed, was the application for placer patent, with the defeat of which the protestants rested. The rejection of the application, which fully answered the controlling issue involved, was based upon the conclusion, drawn from the evidence submitted at the hearing theretofore had, that the placer claimant (Searl) had failed to establish, as a then present fact, the presence in the claim of placer mineral deposits of such extent and value as to justify the issuance of patent; not upon a definitive finding of the non-placer character of the ground and of the total absence of discovery requisite to location. The department did not undertake, in any sense, and it was wholly unnecessary under the issue presented that it should undertake, to determine the validity or invalidity of the placer location. The application for placer patent, and the proofs submitted to support it, formed the subject of inquiry, and beyond this the issue did not go. The expression in the departmental decision of May 13, 1896, referred to by petitioner and above quoted, therefore correctly states the scope of the earlier decision. No rights in his adversaries having supervened, the placer claimant was merely remitted to the position he occupied immediately prior to filing his application, with no apparent obstacle to the enjoyment of the benefits of further efforts to develop the extent and value of mineral deposits in

the land; and whatever rights may now subsist are represented in the present claimants."

And in decision of January 22, 1906 (Clipper Mining Co. vs. Eli Mining & L. Co. *et al.*, on Review, 34 L. D. 401, at 409), it was said:

"But counsel for respondents cite an expression of the United States Supreme Court in this case (194 U. S., 220, 223) as follows:

" 'Undoubtedly when the department rejected the application for a patent it could have gone further and set aside the placer location, and it can now, by direct proceedings upon notice, set it aside and restore the land to the public domain.'

"Mutual reliance upon this utterance seems to be had. Counsel for respondents interpret it to mean that the placer location, the validity and priority of which have been adjudged, operates to withhold the land within its limits from other appropriation, and that only when the land department, upon its own initiative and independent action, shall by direct proceedings and upon notice set the placer location aside "and restore the land to the public domain" will unfettered jurisdiction to entertain the first legal application vest. Emphasis and stress are laid upon the concluding clause of the quotation.

"The department finds no difficulty here and no obstacle opposed to the course outlined in the decision under review. The question of the force and effect of a mining location of itself to preclude or defeat a subsequent location by another is sufficiently discussed above, and no contrary opinion is expressed by the court in this connection. And whilst the court must be well aware that a mining location is not of record before or connected with the land department, and is not so connected or usually within the latter's knowledge until application for patent is filed or it is properly called in question by another, the court must be equally well aware that these locations are constantly

in legal and practical effect set aside and annulled by the issuance of patent to another after proper proceedings involving the question of the character of the land or other sufficient question within the jurisdiction of the land department, upon notice to the locator and opportunity afforded him to be heard. Nor does the court say that the land department must formally 'restore the land to the public domain' before other disposition can be made of it, nor would that course be practicable or necessary: the tract is subject to other and final disposition the instant its present unavailability to the mineral locator is determined. These customary proceedings before the land department must therefore be the 'direct proceedings upon notice' which the court had in contemplation."

A few weeks prior to that decision, the department, in Nome and Sinook Co. *et al.* vs. Townsite of Nome, on Review, 34 L. D. 276, said (pp. 278-9):

> "It is undoubtedly true that owners of unpatented mining claims located upon the mineral lands of the United States are entitled to the exclusive and peaceable possession of their claims so long as they continue to comply with the requirements of the law respecting possessory rights, and are not required to apply for patent at any time, or ever, in order to preserve such possessory rights. These propositions are clearly embodied in the mining laws and are well established by judicial authority. Whenever occasion has arisen, they have been recognized by the department. * * *
>
> "The further contention that in refusing to order a hearing on behalf of these protestants the department has assumed an 'attitude that will force them to apply for mineral patents, or else lose possession of at least a material part of their property,' is equally untenable. In the administration of the public land laws the land department has no authority to determine on their behalf alleged rights of claimants thereunder except where such claimants seek to obtain the legal

or paramount title to the lands claimed. And where a claimant seeks to obtain the legal title to a tract of public land the inquiry by the land department is directed to questions affecting his right to have such legal title conveyed to him and not to questions relating to possessory or other rights unrelated to and disconnected with his application for the legal title. When the protestants here shall apply for patents for their mining claims, should they ever do so, it will be the duty of the land department to inquire into and determine any and all questions which may arise under the mining laws generally, or under section sixteen of the act of 1891, touching their rights to patents from the Government for the legal title to the lands embraced in their claims. In the absence of patent applications the land department has no jurisdiction or authority to make such inquiry and determination. This is in substance the holding of the decision complained of, and the holding is clearly right.

"The protestants may, if they choose, apply for patent and have all questions touching their right to the legal title to the lands claimed by them inquired into and determined in the manner stated, or they may continue to rest upon their claimed possessory rights under their locations, in which latter event, should their rights be invaded, their remedy will be in the courts where such matters are clearly cognizable."

And in instructions to the Commissioner under date of ebruary 6, 1907, it was said (35 L. D. 566):

"The land department has no power to cancel a mining location, having in such case nothing before it or within its reach upon which to act, except where it may be able * * * to effect its defeat by the issuance of patent to another than the mining claimant; and no direct effort to cancel any such location, or merely to declare it invalid, can accomplish any practical result. If a practice along these lines has been followed by your office it should be discontinued."

These declarations by the land department stood undisturbed until Secretary Garfield, in his decision of February 11, 1909, *supra*, in this Cameron case, undertook to go beyond rejection of Cameron's application for patent and formally declare Cameron's possessory title void.

In the meantime the department had conceived that the mining laws authorizing the location and holding of mining claims in forest reserves were being abused, and under date of April 16, 1907, the Commissioner directed the local officers to order a hearing, and issue notice thereof to the claimants of 85 placer claims within the Plumas National Forest, upon special agent's charges that the lands were non-mineral and the claims invalid. The proceedings finally reached the department on appeal and in decision of July 3, 1909 (H. H. Yard *et al.*, 38 L. D. 59), Assistant Secretary Pierce undertook to maintain the power of the department so to proceed against the claimant of a mining location in a forest reserve who was not seeking patent and whose claim was not involved in any application by an adversary applicant for patent for the same land. In that decision, however, Assistant Secretary Pierce appreciated that in conducting the proceedings the department was acting purely administratively. At page 67 he said:

> "Again, if the asserted placer locations are without proper foundation and are unlawful, as is alleged, and if, as the record indicates, these claimants have constructed telephone lines, wagon roads, trails, ditches, dams and reservoirs within the national forest without proper application having been made therefor and requisite authority granted in that behalf by the proper officer, pursuant to the statutes and regulations governing those matters, such construction work within the reserve is unlawful and constitutes a trespass, merely colorable mining locations affording no protection for such unwarranted intrusion and unlawful invasion upon the territory of the national forest. The

investigation of these matters is clearly cognizable before the land department in order that the actual facts and circumstances may be ascertained and declared and that such further and appropriate action may be taken in regard thereto as will secure compliance with and enforcement of the laws and regulations controlling such works."

And again at page 70:

"Charged as it is with the duty of administrating the public domain and with disposing of lands therein to qualified applicants under the laws appropriate thereto, it is incumbent upon this department to see that the public lands are not withheld from use by the Government or from acquisition by proper applicants, through invalid locations, filings or entries made without proper foundation and held without due compliance with law. While it is true, as urged by appellants, that this department has not the judicial authority to remove locators from their invalid claims, it has the power to declare such claims void and to refuse thereafter to recognize them as the basis for proceedings in the land department, and this course is not only required as a matter of administration but, as above indicated, is a power conferred by implication by those laws which charge this department with the proper disposition of the public lands."

And his conclusion was (p. 71):

"It is therefore adjudged that the asserted mining locations were and are wholly null and void, and the lands covered thereby will be administered as part of the public domain, subject to the reservation for forest purposes, without regard to the so-called locations."

The department thereafter pursued the practice of thus investigating possessory mining locations until the subject was reviewed by Assistant Secretary Jones in the case of

J. B. Nichols and Cy Smith wherein he rendered decision under date of October 24, 1913 (unreported), overruling the Yard case and all others of like import. We file herewith a certified copy of that decision and quote here the pertinent portion thereof as follows:

> "After a careful consideration of the question presented by this record, the department is convinced that the policy followed by the land department since the decision in the Yard case, *supra*, is entirely indefensible, whether viewed from an administrative or legal standpoint.
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> "While the title to land remains in the United States and controversies arise between occupants thereof, whether agricultural or mineral, neither party having invoked the jurisdiction of the land department for the purpose of acquiring the ultimate title, the courts have the power to determine their rights, based upon the law of possession and all other questions necessarily involved. Lindley on Mines, Par. 108, citing Marquez vs. Frisbie, 101 U. S. 473, 475. Especially is this true of a valid location of mineral lands, which is property and, while maintained as required by law, has the effect of a grant of the right to the exclusive possession thereof against the United States as well as any other party, plaintiff or defendant. (See Belk vs. Meagher, 104 U. S., 279; and Gwillim vs. Donnellan, 115 U. S. 45.) Being thus a vested legal right enforcible in the courts, they necessarily have jurisdiction to determine whether the right does or does not exist. This jurisdiction, in the absence of an application to this Department looking to the acquisition of the legal title, is clearly exclusive, since the question as to whether lands have or have not been disposed of is one which the courts alone can decide. (See Hardin vs. Jordan, 140 U. S. 371.) The reason for this rule applies as well to any vested interest in as to the entire fee to the land.
>
> "Lacking anything of the essentials to validity, the attempted location of a mining claim is a nullity and

will exclude no one from the land. The courts are open alike to the Government and all claimants under the agricultural and mineral land laws, and they have not only the jurisdiction to determine but the power to enforce their judgments and decrees in cases involving possessory claims to land. Not so with this department, whose undoubted authority to dispose of public land embraced in an invalid location does not extend to entertaining bills for the removal of clouds upon title or actions for trespass or in ejectment. Any attempt by the Secretary of the Interior to usurp the functions of the courts must be barren of results since the law provides him neither the power nor the machinery for the enforcement of any judgment or decree in matters of which jurisdiction is committed to the courts. In fact, one of the fundamental tests of jurisdiction is the answer to the question, 'Has the tribunal power to enforce its judgment?'—a lack of such power negativing the possession of jurisdiction in the premises.

"The department is, moreover, not convinced either of the propriety in or necessity for the rendition of such a judgment as was entered in the Yard case, *supra*. It would amount to no more than an expression of opinion coupled with a declaration of purpose. If infallibility and binding force could be assumed on behalf of such an expression and declaration, all might be well; but to the extent that such a decision might mislead others, whether citizens or officers of the Government, into an unwarranted invasion of private right, it would be as repugnant to good administration as subversive of law.

"In arriving at the conclusion herein reached, the department is merely returning to the position it had uniformly assumed in like cases, prior to the decision in the Yard case. It is not believed that anything of convincing force can be added to the reasoning of Secretary Hitchcock in Nome and Sinook Co., *et al.* vs. Townsite of Nome (34 L. D., 275), in which he held that the land department was without jurisdiction

in inquiries of the character here under consideration.

"The Yard case and all others of like tenor are, accordingly, overruled, the decision appealed from is reversed and the proceeding dismissed."

Previous to this ruling of Assistant Secretary Jones, the Commissioner had initiated proceedings against certain other possessory mining claims of the appellant Cameron and the local officers undertook to proced with the bearing in the face of Assistant Secretary Jones' decision. Cameron thereupon filed a bill in the United States District Court for Arizona against the local officers to enjoin them from proceeding in the case, but the court, on the authority of Plested vs. Abbey, 228 U. S. 42, held (Cameron vs. Weedin, *et al.*, 226 Fed. 44) that it was without jurisdiction to enjoin the local officers from carrying out the orders of their superior officers. Appeal to this court was allowed, but counsel for Cameron, in order to avoid the jurisdictional question raised in that case, abandoned the appeal and filed in the Supreme Court of the District of Columbia a bill for injunction against the Secretary and Commissioner. The trial court, holding that the department was without power so to proceed against a possessory mining title, entered a decree enjoining the defendants as prayed. On appeal the Court of Appeals of the District of Columbia (Lane vs. Cameron, 45 App. D. C., 404) reversed the court below and directed the dismissal of the bill.

The opinion of the D. C. Court of Appeals in that case proceeded upon the erroneous assumption that the question of character of land is one exclusively within the jurisdiction of the land department and, therefore, the courts would be without jurisdiction of a suit by the United States to oust the claimant of an alleged possessory mining claim, and, hence, the United States would be powerless in the

premises unless the land department, on its own initiative and in its dual capacity of plaintiff and judge, could attack and conclusively adjudicate the question of the validity of the location under the guise of adjudicating the question of the character of the land.

But this court, two years previously, in Gauthier vs. Morrison, 232 U. S. 452 (a case which was not brought to the attention of the D. C. Court of Appeals), recognized the broad rule that the courts have jurisdiction of all controversies affecting possessory rights and of all questions arising therein, where the jurisdiction of the land department has not been invoked, or attached, by application for patent and proceedings pending thereon. See also 1 Lindley on Mines, 3d Ed., Sec. 108, pp. 188 *et seq.*, where the subject is fully presented with particular reference to the questions of character of land and mineral discovery.

But, while the heads of the land department were contending in the Cameron case that the courts were without jurisdiction of suits attacking the validity of possessory mining titles and securing such rulings from the D. C. Court of Appeals, the same department, through the machinery of the Department of Justice, was promiscuously attacking possessory mining titles in the courts. U. S. vs. Midwest Oil Co. 236 U. S. 459; U. S. vs. McCutchen, 217 Fed. 650, 234 Fed. 702, 238 Fed. 575; U. S. vs. Midway Northern Oil Co., 216 Fed. 802, 232 Fed. 619; El Dora Oil Co. vs. U. S., 229 Fed. 946; U. S. vs. Grass Creek Oil & Gas Co., 236 Fed. 481; U. S. vs. Devils' Den Consol. Oil Co., 236 Fed. 973, 251 Fed. 548; U. S. vs. Stockton Midway Oil Co., 240 Fed. 1006; U. S. vs. Ohio Oil Co., 240 Fed. 996; U. S. vs. Record Oil Co., 242 Fed. 745; U. S. vs. North America Oil Cons. Co., 242 Fed. 723; U. S. vs. Thirty Two Oil Co., 242 Fed. 730; U. S. vs. Brookshire Oil Co. 242 Fed. 718; Consol. Mutual Oil Co. vs. U. S. 245 Fed. 521;

U. S. vs. Honolulu Oil Co., 249 Fed. 167; U. S. vs. Rock Oil Co., 257 Fed. 331; U. S. vs. California Midway Oil Co., 259 Fed. 343, and others.

In the Ohio Oil Co. case the court adjudicated the question of discovery. In the McCutchen case application for patent had been filed and the purchase money paid and final certificate withheld pending proceedings on special agent's charges, and, after hearing, the application had been rejected (44 L. D. 420); nevertheless the court entered upon the inquiry as to whether there had been discovery and adjudicated that issue (238 Fed. 575).

In the Devils' Den, the Record Oil Co. and the Consolidated Mutual Oil Co. cases final certificates had issued and proceedings on charges were pending in the land department. In the Devils' Den case the District court held that it had jurisdiction notwithstanding the pendency of proceedings in the land department (236 Fed. 973), but was reversed by the Circuit Court of Appeals (251 Fed. 548). In the Record Oil Co. case the Government contended that the final certificate and the proceedings in the land department could be disregarded and the same questions litigated in the courts. In the Consolidated Mutual Oil Co. case the Circuit Court of Appeals, notwithstanding the proceedings in the land department, disposed of the case on its merits.

In some of the cases cited the question was whether the claimants were diligently proceeding with discovery work within the meaning of the Pickett act; in others the question was the validity of withdrawals prior to the Pickett act; and in others the question was whether dummy locators had been used. But in all of the cases the questions presented were such as would be passed upon by the land department in disposing of applications for patent.

But upon the strength of the improvident ruling obtained

from the D. C. Court of Appeals, the land department proceeded to review Assistant Secretary Jones' decision in the Nichols and Cy Smith case, *supra*, and (per Assistant Secretary Vogelsang, February 6, 1917, 46 L. D. 20) again undertook to uphold its power to attack possessory mining titles. In that decision it was sought to construct the desired jurisdiction by implication from Secs. 441, 453 and 2478 U. S. R. S., the act of February 1, 1905, transferring the administration of forest reserves to the Department of Agriculture, and general expressions used by this court in reference to the jurisdiction of the land department and finality of its action in issuing patent.

Sec. 441 U. S. R. S., provides merely that—

> "The Secretary of the Interior is charged with the *supervision of public business* relating to the following subjects: * * * Second, The public lands, including mines."

Sec. 453 U. S. R. S., provides merely:

> "The Commissioner of the General Land Office shall perform, under the direction of the Secretary of the Interior, all *executive* duties appertaining to the surveying and sale of the public lands of the United States, or in anywise respecting such public lands, and, also, such as relate to private claims of land, and the issuing of patents for all grants of land under the authority of the Governmen[illegible]"

Sec. 2478, R. S. U. S., provides merely:

> "The Commissioner of the General Land Office, under the direction of the Secretary of the Interior, is authorized to enforce and carry into execution, *by appropriate regulations*, every part of the provisions of this title not otherwise specially provided for."

And the act of February 1, 1905, *supra*, provided merely

that the Secretary of Agriculture should thereafter execute or cause to be executed all laws affecting the public lands within the national forests, "excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any of such lands."

Obviously this was merely a form of specification, by general and excepting clauses, of the power and duty conferred upon the Secretary of Agriculture.

Nelson vs. Brownell, 193 Fed. 641, and Lassley vs. Brownell, 199 Fed. 772, cited by Assistant Secretary Vogelsang, went only to recognition that legislation regarding Alaska did not provide for adverse claim and suit between mineral and homestead claimants and, that pending proceedings on homestead application, the courts were without jurisdiction of a suit by a mineral claimant to quiet title.

Assistant Secretary Vogelsang then cited Clipper Mining Co. vs. Eli Mining & Land Co., 194 U. S. 220, Cameron vs. Weedin, 226 Fed. 44, and Lane vs. Cameron, 45 D. C. App. 404, which we have hereinbefore considered.

The case of Susan A. Leonard, 40 L. D. 429, also cited, involved a homestead application based upon settlement by the applicant's husband prior to the inclusion of the land in a forest reserve, and the question of the validity of that settlement was the issue in the case; and in suggesting that no substantial grounds were perceived for attempting any distinction between a settler's possessory right and a mining claimant's location rights, with respect to the jurisdiction of the land department, Assistant Secretary Vogelsang overlooked the fact that a mining location has the status of property—a grant, while settlement does not create a property right but confers merely preference over others in case the land remain or become subject to purchase or entry.

Assistant Secretary Vogelsang then undertook to meet

the fundamental proposition that the lack of power to execute or enforce a judgment or declaration of the invalidity of a possessory mining title negatives the possession of power or jurisdiction by the department, and, after citing South Dakota vs. North Carolina, 192 U. S. 286, and Virginia vs. West Virginia, 238 U. S. 202, 241 U. S. 530, proceeded (we quote his propositions with comments):

> "It can with propriety be said that a proper test of jurisdiction is the power of the tribunal to render a judgment efficient according to the nature of the proceeding."

But the efficiency of a judgment depends upon the power to execute or enforce it.

> "In cases like this the outstanding issues of fact are as to discovery and the character of the land. No one contends that where patent is sought the land department has not exclusive jurisdiction to determine these issues."

Yet the Government itself was contending to the contrary in the McCutchen, Devils' Den, Record Oil Co. and Consolidated Mutual Oil Co. cases, *supra*.

> "Its determination so made is conclusive in the absence of fraud."

This is true (with limitations) only in case patent issue and then, not through recognition of the function of the department as judicial, but as an incident of patent. If the department deny patent its action is and remains purely administrative. It is no more judicial in character than action of accounting officers of the Government in denying a money claim.

> "It is the duly authorized tribunal organized and equipped to that end."

It is not a tribunal in the judicial sense, but an executive or administrative body whose determinations of fact, when carried to finality by the issuance of patent, become conclusive (within limitations).

> "After notice and opportunity for full hearing, it determines the status of lands and of claims asserted thereto. It allows or disallows claims, rejects applications and cancels entries pursuant to its findings."

This is all true within the limitation that it is empowered to act only upon application for patent or in the disposition of the fee and to pass upon adversary claims as necessary and incident in and to the determination of the right to patent or disposition of the fee.

> "By it the rights of claimants are adjudicated."

The department not being a judicial body, this is true only to the limited extent that the issuance of patent disposes (within limitations) of adversary claims.

> "In no case does it undertake to put any claimant in possession of an awarded tract. Neither does it attempt to dispossess any occupant under a rejected claim. So here, any judgment to be rendered will be efficient and appropriate to the end sought. The question of discovery will be investigated and determined and the legal standing of the claim thereupon adjudged. From the findings so made certain legal consequences will naturally flow."

It may be conceded that the department may, for administrative purposes, investigate the validity of a possessory mining title, but no legal consequences can flow therefrom. Lack of power to execute or enforce is a conclusive negative of judicial power.

In instructions of May 15, 1907 (35 L. D. 565) the department took the proper view of its functions in respect of

possessory claims. After quoting from instructions to the Commissioner under date of Feb. 6, 1907, as follows (p. 566):

> "The land department has no power to cancel a mining location, having in such case nothing before it or within its reach upon which to act, except where it may be able * * * to effect its defeat by the issuance of patent to another than the mining claimant; and no direct effort to cancel any such location, or merely to declare it invalid, can accomplish any practical result. If a practice along these lines has been followed by your office it should be discontinued,"

it was said (pp. 566-7):

> "As a general rule hearings to determine the character of public lands are ordered and had only when *ex parte* claims, or opposing claims which hinge upon that question, are in that regard brought to the attention of the land department, by protest or otherwise, upon application to secure the legal title, or in analogous cases, as when private claims are inconsistent with some public use or purpose to which the land thereby covered may be devoted, pursuant to law, by or subject to the jurisdiction of any department of the Government, where the character of the land is a determinative element.
>
> "It does not follow, however, that the right to order hearings or enter upon investigations for that or any other essential purpose is confined to such cases. By virtue of its jurisdiction over the public lands, involving their care as well as their disposition, the land department may at any time, of its own motion or at the instance of others, wherever it appears or is charged that claims asserted under any of the public-land laws are merely colorable and are used to cloak unlawful timber cutting, illegal fencing, the wrongful exclusion of *bona fide* settlers or claimants, or otherwise to the subversion of those laws, inquire into and determine those questions *and thereupon take such*

further action as may be appropriate and necessary to enforce its jurisdiction and preserve the rights and interests of the public.

"In view of what has thus been brought to the attention of the department it would appear that the proposed hearings would be justified as the bases, in the event of appropriate results, for further and *dispositive* action pursuant to the provisions of section 2384, Revised Statutes, as follows" * * *

See also Assistant Secretary Pierce's recognition of this in the Yard case (38 L. D. 59) quoted *supra.*

But where hearings cannot be justified as bases for *dispositive* action, appropriate action, if demanded by the public interests, can be only request to the Attorney General to institute suit on behalf of the United States.

And this is the logic of the situation. The mining claimant holds his mining claim, if valid, by grant from Congress. It is property in the highest sense. If he applies for patent to the land department, the executive administrative body charged with the duty of acting upon applications for the Government's fee simple title, he is without redress if his application be wrongfully denied. He is then left where he started, with his possessory title, the legality of which depends primarily upon discovery.

To be sure, as an incident of the issuance of patent to another after controversy in the land department, the miner's claim of possessory title may be destroyed. This is too well settled by decisions of this court to be questioned now, but that an executive officer may destroy a property right—a grant from Congress, is an anomaly in our system of separation of executive and judicial functions. But, with that exception, the miner's title is protected by the mantle of the Constitution and the validity thereof is the subject only of judicial inquiry and adjudication.

As said by Assistant Secretary Jones in the Nicholls and Smith case, *supra:*

> "Being thus a vested legal right enforcible in the courts, they necessarily have jurisdiction to determine whether the right does or does not exist. This jurisdiction, in the absence of an application to this department looking to the acquisition of the legal title is clearly exclusive, *since the question as to whether lands have or have not been disposed of is one which the courts alone can decide.*"

The logical and proper tribunals to try the issue of discovery, upon which the miner's title depends, are the courts of the vicinage—not an administrative body two or three thousand miles away acting both as prosecutor or plaintiff and judge or jury.

As said by Justice Hawley, then of the Supreme Court of Nevada, in Overman Silver Mining Co. vs. Corcoran, 15 Nev. 147:

> "Every lawyer at all familiar with the trial of mining cases where the question of existence, or non-existence, of a lode or vein is raised, understands the difficulty that is often, we might say always encountered in the attempt to ascertain the facts. Practical miners, experts, and men of science are often examined as witnesses, and they frequently differ as much in their statement of facts as in their conclusions of judgment. *It is especially the province of a jury to determine the disputed question of fact thus raised.* When suits of this character are tried, it is often the custom to allow the jurors to visit and examine the ground in dispute, the better to enable them to correctly decide all questions where there is any conflict of opinion."

And this court has said (Erhardt vs. Boaro, 113 U. S. 527):

> "It would be difficult to lay down any rule by which to distinguish a speculative location from one made in good faith, with a purpose to making excavations and ascertain the character of the lode or vein so as to determine whether it would justify the expenditure required to extract the metal; *but a jury from the vicinity of the claim will seldom err in their conclusions on the subject.*"

And should the Government feel justified in attacking the validity of a possessory mining title and ousting the claimant, no substantial reason can be suggested why it should not go into the Federal court of the vicinity and submit the issue to the determination of a jury, or, if it go into court, why the court, with the aid of a jury, should not determine the issue of discovery irrespective of any administrative ruling of the land department in rejecting application for patent.

The ruling of the courts below presents the paradox of courts holding to be binding upon them (*judicial* bodies) a ruling or declaration of an *administrative* body which is not even final or binding as to such administrative body itself.

It is submitted, therefore, that the departmental declaration of invalidity of the Cape Horn lode claim was no more than an expression of opinion or administrative attitude, that it was not judicial action in any sense or in any wise binding upon the courts, and that the bill should have been dismissed for lack of independent allegation of invalidity of the mining claim.

II

THE RULING OF THE LAND DEPARTMENT THAT THE CAPE HORN LODE CLAIM WAS VOID WAS PALPABLE ERROR OF LAW AND FOR THAT REASON, ASIDE FROM THE BROADER ONE, NOT BINDING ON THE COURTS.

This point has been fully developed in the statement of the case and little need be added by way of argument.

The point is that the department, following its erroneous ruling in Brophy vs. O'Hare, *supra*, drew a distinction between the quality of discovery sufficient to validate location and the quality of the mineral showing necessary to justify the issuance of patent, and its conclusion was, not that there had not been such showing of mineral as "that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a paying mine" (the universally recognized test), but that "the land is not shown to possess such mineral character and values as to justify the land department in awarding the desired patent."

In the decision of the department, quoted *supra*, sufficient facts are found to force the conclusion that a man of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a paying mine. It there appears that the claim is located on a recognized mineral bearing limestone belt with concentrations of high-grade mineral in irregular fractures. Assays from the claim ran as high as 1.8 oz. silver and 12.5 per cent ($40) copper per ton, but Cameron had not been fortunate enough to open up one of the larger and valuable ore bodies. The lime stratum in question is comparable to the big lime formation which

in Lawson vs. United States Mining Co., 207 U. S. 1, this court held to be a single vein although the valuable mineral was distributed through it in irregular bodies.

In the departmental decision in this Cameron case it was suggested that sufficient time had elapsed for a fair demonstration of the mineral possibilities of the claims in question. But the statute does not require a locator to develop a paying mine within any particular time, but merely evidence his good faith by doing $100 worth of work each year. The law was not passed for the benefit of wealthy corporations or individuals who are able to spend large sums and get quick results, but for the benefit of the ordinary prospector who may strain his resources in doing even his annual assessment work and may be years developing his claim before he strikes pay ore. The attitude of the department in suggesting that there had been ample time to develop the mineral possibilities of the land is further reprehensible in that Cameron upon filing his applications for patent was plunged at once into expensive litigation before the department and certainly could not be expected to carry that burden and at the same time do more than the amount of work prescribed by law.

We submit that the decision of the department, in final analysis, resolves into a ruling, not that Cameron had not made discovery sufficient to validate the location, but that he had not developed a paying mine, and that, in any view, it was not entitled to judicial recognition.

III

THE ATTEMPTED SETTING APART OF THE LAND AS THE GRAND CANYON NATIONAL MONUMENT WAS UNAUTHORIZED, VIOLATIVE OF THE FOREST RESERVE LAWS, AND VOID.

The respective boundaries of the forest reservation and

the national monument are shown on the diagram opposite page 134 of the record.

By the forest reservation the land was withdrawn from occupation or appropriation of every character other than mineral exploration, location, occupation, and purchase. There could, therefore, be no purpose to be subserved by further setting it apart as a national monument other than to withdraw it from mineral exploration, location, occupation and purchase. The attempt so to set it apart was made under assumed authority of the Act of June 8, 1906 (34 Stat. 225), which reads:

> "An Act for the preservation of American Antiquities.
>
> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than five hundred dollars or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.
>
> "Sec. 2. That the President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected: Provided, That when such

objects are situated upon a tract covered by a *bone fide* unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in behalf of the Government of the United States.

"Sec. 3. That permits for the examination of ruins, the excavation of archeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture and War to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as they may prescribe: Provided, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gathering shall be made for permanent preservation in public museums.

"Sec. 4. That the Secretaries of the departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this Act."

The proclamation in question reads (R. p. 133):

WHEREAS, the Grand Canyon of the Colorado River, which is situated upon public land within the Grand Canyon National Forest, in the Territory of Arizona, is an object of unusual scientific interest, being the greatest eroded canyon within the United States, and it appears that the public interests would be promoted by reserving it as a National Monument, with such other land as is necessary for its proper protection;

Now, therefore, I, THEODORE ROOSEVELT, President of the United States of America, by virtue

of the power in me vested by section two of the Act of Congress, approved June 8, 1906, entitled, "An Act for the preservation of American antiquities," do proclaim that there are hereby reserved from appropriation and use of all kinds under all of the public land laws, subject to all prior valid adverse claims, and set apart as a National Monument, all the tracts of land, in the Territory of Arizona, shown as the Grand Canyon National Monument on the diagram forming a part hereof.

The reservation made by this proclamation is not intended to prevent the use of the lands for forest purposes under the proclamation establishing the Grand Canyon National Forest, but the two reservations shall both be effective on the land withdrawn, but the National Monument hereby established shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure or destroy any feature of this National Monument or to locate or settle upon any of the lands reserved by this proclamation.

The first section of the act protects antiquities, etc., in land already reserved, so that action under the second section was not necessary to insure the protection and maintenance of "historic landmarks, historic structures, and other objects of historic or scientific interest," in the Grand Canyon, already in forest reservation.

But aside from that, the whole Grand Canyon (so attempted to be set apart) is not a landmark, structure, or object of historic or scientific interest, within the meaning of the act, but is merely an enormous canyon from eleven to fourteen miles in width and approximately one mile in depth. The proclamation undertook to define it as "an object of unusual scientific interest" merely because of its size, and to set apart an area approximately sixty miles long and thirty miles in width.

It is submitted that such action was not sanctioned by

the act in question and was violative of, and an attempt to evade, the provision in the forest reserve laws declaring that lands in forest reserves should continue to be subject to mineral exploration, location, occupation and purchase.

The application of the point is that, the alleged national monument being eliminated, the land remained subject to mineral exploration and that, even though it were found that Cameron had not validated his location by sufficient discovery, he had the right to continue exploration and, in any event, could not lawfully be restrained therefrom.

Respectfully submitted,

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In the Supreme Court of the United States.

OCTOBER TERM, 1919.

RALPH H. CAMERON, NILES J. CAMERON, B. A. CAMERON, S. D. PEPIN, and L. L. FERRALL, Appellants,
v.
THE UNITED STATES OF AMERICA.
No. 205.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This suit was brought by the United States to enjoin the appellants from occupying, using, or asserting any claim to the possession of certain lands located within the Grand Canyon National Monument and the Tusayan National Forest. R. 11. A decree in favor of the United States was entered by the District Court. R. 39. Upon appeal, the Circuit Court of Appeals affirmed the judgment entered below (R. 203–213; 250 Fed. 943), and the defendants thereupon brought the case to this court. R. 216.

On February 20, 1893, the land involved in this suit, with other lands, was set apart as the Grand Canyon Forest Reserve. R. 112. Since then, the land has continuously remained National Forest land and is now embraced in the Tusayan National Forest established by Proclamation of the President dated June 28, 1910. R. 127.

This land, by Proclamation dated January 11, 1908, was further withdrawn as a part of the Grand Canyon National Monument and "reserved from appropriation and use of all kinds under all of the public land laws, subject to all prior valid adverse claims." R. 133.

On April 10, 1902, defendant Ralph H. Cameron, in pretended compliance with the mining laws, located the land in controversy as the Cape Horn Lode Mining Claim, and on February 23, 1904, made an amended location. On May 17, 1905, the said defendant filed his application for patent for this and another lode claim not here involved, and the application was protested. One ground of the protest was that the lands were non-mineral in character. A hearing upon this protest was ordered by the Land Department, and was held at the same time with two other like applications, similarly protested, covering neighboring lands not involved in this suit. The defendant Ralph H. Cameron appeared and introduced evidence in support of this and his other alleged claims and his applications for patents thereon. On February 11, 1909, the Secretary of the Interior,

after full consideration of the evidence taken, rendered his decision and held as follows:

> The evidence wholly fails to show that there are veins or lodes carrying valuable and workable deposits of gold, silver, or copper, or any other minerals within the limits of the locations. (Cape Horn and others.) R. 153.
>
> * * * * *
>
> Upon the entire record, viewed and interpreted in the light of the leading authorities on the subject, *the department is clearly of the opinion that the land is not shown to possess such mineral character and values as to justify the land department in awarding the desired patent.* R. 158. (Italics ours.)

The Secretary further said:

> It follows from the foregoing that each of Cameron's applications for patent * * must be rejected and canceled, and it is so ordered. R. 159.
>
> It is the further result of the evidence, and the Department holds, *that the several mining locations, * * * do not stand upon such disclosures or indications of valuable mineral in rock in place therein, prior to the establishment of the National Monument and the withdrawal of the lands therein embraced, as to bring them within the saving clause of the Executive order.* The right of Cameron to continue possession or exploration of those claims is hereby denied, and the land covered thereby is declared to be and remain part of the Grand Canyon National Monument, as if such locations had not been attempted. R. 159, 160. (Italics supplied.)

Thereafter, on November 29, 1911, the First Assistant Secretary of the Interior held that the effect of this decision was "to hold invalid and void" the locations involved, and after a reconsideration of the facts denied a motion for the review of the former decision. R. 161.

On April 3, 1912, the General Land Office, by the Assistant Commissioner, declared the above mentioned decision of the Secretary of the Interior to be final, and rejected and cancelled the application for patent; denied the right of Cameron to continue possession or exploration of the claims thereby rejected and cancelled; and declared the land to be a part of the Grand Canyon National Monument. R. 168–170.

Notwithstanding such proceedings before the Department of the Interior and the final decision of that Department, the defendant Ralph H. Cameron, on July 28, 1914, in an attempt to reopen the matters and questions theretofore finally determined, filed a second application under the mining laws for a patent to the Cape Horn Lode Mining Claim. R. 172. The Commissioner of the General Land Office rejected the second application (R. 176–183), and the Secretary of the Interior, on appeal, affirmed the Commissioner's action (R. 184), and held that the application had no valid basis, as

> the Department expressly found that no discovery of mineral had been made within the limits of the Cape Horn location, and that there was no evidence before the Department

showing the existence of any valuable deposits or any minerals within the limits of the location." R. 186.

The area claimed by the defendants is located on the rim of the Grand Canyon of the Colorado River, near the railroad station at Grand Canyon, Arizona. Notwithstanding the decisions of the Department of the Interior declaring the mining claim to be null and void, the defendant Ralph H. Cameron, as disclosed by the record, has continued to assert the right to the continued use and occupancy of the land and has prevented the plaintiff from causing to be constructed improvements, such as walks, rails, seats, etc., which are needed for the convenience and protection of the large numbers of the public desiring to view the great scenic and scientific wonders of the Grand Canyon. R. 6 and 100. And by reason of his asserted right to exclusive use and possession of the land, and by reason of suits instituted and threats made and violence offered by the defendants, persons desiring to secure permits to occupy, in conformity with the rules and regulations governing such occupancy, portions of the land for the purpose of conducting thereon enterprises for the convenience of the public, have been prevented from so doing, and have been forcibly ejected and deterred from securing such permits. R. 6, 7 and 102.

It appears from the record that defendant Ralph H. Cameron and the other defendants, who claim under him, have erected numerous buildings since the withdrawal of the land as a part of the Grand

Canyon Forest Reserve. Some of the buildings have been enlarged and additional buildings have been constructed subsequent to the decisions of the Department of the Interior. The defendants are occupying the buildings as residences and for the purpose of conducting livery and other business enterprises. The record also shows that the defendants have permitted to accumulate near these buildings large deposits of stable manure, garbage and other refuse, to the discomfort of the public, and have greatly detracted from the scenic beauties of the Grand Canyon. R. 88–98.

On September 19, 1913, defendant Ralph H. Cameron was formally offered a Free Special Use permit, authorizing the occupancy of that part of the land on which the buildings are located, subject to the rules and regulations prescribed by the Secretary of Agriculture, but he declined to accept the permit and it was subsequently formally revoked. R. 8 and 9.

Pretending to do annual assessment work on the alleged mining claim, the defendant Ralph H. Cameron has excavated cuts, tunnels and shafts on the land, and threatens that he will continue such excavations and pretended mining operations. R. 9 and 24.

The District Court denied a motion made for a dismissal of the bill, which motion was based on the ground that the matters alleged therein did not constitute any ground for equitable relief and that the defendants were entitled to trial on the law side of

the court. R. 32 and 33. The defendants thereupon filed an answer, denying the ownership of the complainant and asserting that the defendant Ralph H. Cameron became the owner of the land by virtue of his pretended mining location of April 10, 1902. While admitting his subsequent applications for patent, it was alleged that the decisions of the Department of the Interior were beyond its jurisdiction. R. 13 et seq.

The defendants offered certain testimony in a case in the Superior Court of Coconino County, Arizona, for the alleged purpose of establishing the validity of the Cape Horn Lode Mining location. Objection to this evidence and testimony was made on the ground that the court was concluded by the decisions of the Department of the Interior denying the application for patent and annulling the mining location. This objection was sustained by the District Court (R. 54), and its action was affirmed by the Circuit Court of Appeals. R. 203; 250 Fed. 943.

The Circuit Court of Appeals in its opinion held that:

> * * * nothing is better settled than that the facts in respect to the character of public land applied for under the laws authorizing its disposition, as well as the facts in respect to the performance of the acts required by the law to be performed by the applicant, are for the exclusive determination of the Land Department,

and,

> * * * even though it be conceded that the Land Department was without jurisdiction to order, as it did in the instant case, the cancellation of the applicant's mining location, yet its determination of the fact that the ground applied for was not mineral land in effect cut up by the roots every step taken by the applicant under the mining laws, necessarily including his mining location. R. 211; 250 Fed. 946.

The main and controlling question presented in this case is with respect to the power of the Land Department, when application for patent to a mining claim is presented to it, to pass upon and determine the validity of the location upon which the application is based.

ARGUMENT.

The Land Department, in rejecting an application for a patent to a mining claim, has authority to cancel and set aside the location upon which the application is based.

(1) *This court has announced that the Land Department has such authority.*

The case of *Clipper Mining Company* v. *Eli Mining & L. Company*, 194 U. S. 220, involved a conflict between lode and placer claimants of the same land. The Interior Department rejected an application for patent on the placer location, but did not declare the placer location void. The lode claimants thereupon made application for patent and an adverse claim was filed by the placer claimants. The lode

claimants contended, when the case came before this Court, that the decision of the Interior Department rejecting the application for placer patent automatically annulled the placer location. The court, by Mr. Justice Brewer, said (p. 223):

> So far as the record shows—and the record does not purport to contain all the evidence—the placer location is still recognized in the department as a valid location. Such also was the finding of the court, and being so there is nothing to prevent a subsequent application for a patent and further testimony to show the claimant's right to one. *Undoubtedly when the department rejected the application for a patent it could have gone further and set aside the placer location, and it can now, by direct proceedings upon notice, set it aside and restore the land to the public domain.* (Italics ours.)

And again (p. 234):

> The land office may yet decide against the validity of the lode locations and deny all claims of the locators thereto. So also it may decide against the placer location and set it aside, and in that event all rights resting upon such location will fall with it.

Although seemingly conclusive, we are not required to rely solely on the foregoing, and, at the risk of supererogation, submit the following in additional support of our contention.

(2) *General jurisdiction of the Land Department.*

Unless otherwise specifically provided, complete supervision and control of all public lands are vested in the Secretary of the Interior. *Catholic Bishop of Nesqually* v. *Gibbon*, 158 U. S. 155, 167. His functions are both administrative and judicial. *Riverside Oil Co.* v. *Hitchcock*, 190 U. S. 316, 324.

In *Smelting Co.* v. *Kemp*, 104 U. S. 636, this court said (p. 640):

> That the provisions [for passing title] may be properly carried out, a land department, as part of the administrative and executive branch of the government, has been created *to supervise all the various proceedings taken to obtain the title, from their commencement to their close.* (Italics supplied.)

In *United States* v. *Beebe*, 127 U. S. 338, 342, the court, by Mr. Justice Lamar, held:

> The public domain is held by the Government as part of its trust. The Government is charged with the duty and clothed with the power to protect it from trespass and unlawful appropriation, and under certain circumstances, to invest the individual citizen with the sole possession of the title which had till then been common to all the people as the beneficiaries of the trust.

In *McDaid* v. *Oklahoma Ter., ex rel. Smith*, 150 U. S. 209, 215, the court, by Mr. Chief Justice Fuller, referring to the jurisdiction of the Land Department, used the following language:

In *Knight* v. *United States Land Association*, 142 U. S. 161, the supervisory power of the Secretary of the Interior over all matters relating to the sale and disposition of the public lands, the surveying of private land claims and the issuing of patents thereon, and the administration of the trusts devolving upon the government by reason of the laws of Congress or under treaty stipulations, respecting the public domain, was fully considered, and numerous authorities cited. It was declared by Mr. Justice Lamar, speaking for the court, that *the Secretary was clothed with plenary authority as the supervising agent of the government to do justice to all claimants, and to preserve the rights of the people of the United States, and that he could exercise such supervision by direct orders or by review on appeal, and, in the absence of statutory direction, prescribe the mode in which it could be exercised by such rules and regulations as he might adopt.* (Italics supplied.)

In order to sustain an application for patent there must be a *valid* location, the primary essential of which is a discovery of valuable mineral deposits within the limits of the claim, for Section 2320 R. S. declares "no location of a mining claim shall be made until the *discovery* of the vein or lode within the limits of the claim located." The purpose of that is declared by this court in *Waskey* v. *Hammer*, 223 U. S. 85, 90, to be "to reward the discoverer *and to prevent the location of land not found to be mineral*". (Italics ours.)

The defendant, Ralph H. Cameron, invoked and submitted himself to the jurisdiction of the Land Department when he made application to it for a patent. It then became the duty of that department to determine whether he was entitled to a patent. In order to warrant the issuance of a patent, it was necessary for the department to find that the land was mineral and that a discovery had been made within the limits of the claim. Cameron, by thus invoking the jurisdiction of the Department, clearly conceded its power to make the determination. The Department found and declared the land to be non-mineral and that no discovery had been made upon the claim and that the purported location was void.

But the defendants challenge the power of the Land Department to do more than reject the application for patent, and assert that their rights under the location are not cognizable by that Department.

Their position appears to be this: They admit the power of the Department to declare a location valid, which involves a determination that the land is mineral and that discovery has been made, for that would be the effect of the issuance of patent, but deny that it has power to declare a location invalid for want of discovery and because the land is found to be non-mineral in character. In other words, the jurisdiction of the Land Department is one-sided only.

This contention impresses us as being neither good logic nor good law.

The defendants lay great stress upon their alleged possessory rights under the mining law, but such

possessory rights must be predicated upon a discovery of mineral, and the Department vested with jurisdiction over that question has found that there was no such discovery and that the land is non-mineral in character. As was said by the Circuit Court of Appeals in the opinion (R. 211; 250 Fed. 946):

> And even though it be conceded that the Land Department was without jurisdiction to order, as it did in the instant case, the cancellation of the applicant's mining location, yet its determination of the fact that the ground applied for was not mineral land in effect cut up by the roots every step taken by the applicant under the mining laws, necessarily including his mining location; and such was the decision of the Supreme Court of Arizona in the case of *Cameron* v. *Bass*, 168 Pac. 645, regarding, in part, the very ground here in controversy.

Now, the question as to the character of the land was one exclusively for the Land Department, and committed to its sole jurisdiction. That it is for that department and not the courts to determine the character of lands sought to be acquired under the public land laws, is well established. In *Steel* v. *Smelting Company*, 106 U. S. 447, Mr. Justice Field, in delivering the opinion of the court and speaking of the functions of the Land Department, said (pp. 450, 451):

> Whenever, therefore, mines are found in lands belonging to the United States, whether within or without town sites, they may be

claimed and worked, provided existing rights of others, from prior occupation, are not interfered with. Whether there are rights thus interfered with which should preclude the location of the miner and the issue of a patent to him or his successor in interest, is, when not subjected under the law of Congress to the local tribunals, a matter properly cognizable by the Land Department, when application is made to it for a patent; and the inquiry thus presented must necessarily involve a consideration of the character of the land to which title is sought, whether it be mineral, for which a patent may issue, or agricultural, for which a patent should be withheld, and also as to the citizenship of the applicant.

We have so often had occasion to speak of the Land Department, the object of its creation, and the powers it possesses in the alienation by patent of portions of the public lands, that it creates an unpleasant surprise to find that counsel, in discussing the effect to be given to the action of that department, overlook our decisions on the subject. That department, as we have repeatedly said, was established to supervise the various proceedings whereby a conveyance of the title from the United States to portions of the public domain is obtained, and to see that the requirements of different acts of Congress are fully complied with. Necessarily, therefore, it must consider and pass upon the qualifications of the applicant, the acts he has performed to secure the title, the nature of the

> land, and whether it is of the class which is open to sale. Its judgment upon these matters is that of a special tribunal, and is unassailable except by direct proceedings for its annulment or limitation. Such has been the uniform language of this court in repeated decisions.

And in *Barden* v. *Northern Pacific Railroad*, 154 U. S. 288, it was said (pp. 320, 321):

> The determination of the character of the land granted by Congress, in any case, whether agricultural or mineral, or swamp or timber land, is placed in the officers of the Land Department, whose action is subject to the revision of the Commissioner of the General Land Office, and on appeal from him by the Secretary of the Interior. Under their direction and supervision the actual character of the land may be determined and fully established.

Further (pp. 326, 327):

> The law places under the supervision of the Interior Department and its subordinate officers, acting under its direction, the control of all matters affecting the disposition of public lands of the United States, and the adjustment of private claims to them under the legislation of Congress. It can hear contestants and decide upon the respective merits of their claims. It can investigate and settle the contentions of all persons with respect to such claims. It can hear evidence upon and determine the character of lands to which different parties assert a right; and when the

> controversy before it is fully considered and ended, it can issue to the rightful claimant the patent provided by law, specifying that the lands are of the character for which a patent is authorized. It can thus determine whether the lands called for are swamp lands, timber lands, agricultural lands, or mineral lands, and so designate them in the patent which it issues.

To the same effect are:

Duffield v. *San Francisco Chemical Co.*, 198 Fed. 942, 944;
LeFevre v. *Amonson*, 11 Idaho, 45;
Wright v. *Town of Hartville*, 13 Wyo. 497;
Nevada Exploration & Mining Co. v. *Spriggs*, 41 Utah, 171;
Lane v. *Cameron*, 45 App. D. C., 404.
Earl v. *Morrison*, 39 Nevada, 120.

But, say defendants, Cameron is entitled to be heard in *court* upon his possessory right, notwithstanding the determination of the Land Department. The answer to this is that nothing is better settled than that the courts are bound by findings of the Land Department upon questions of fact on matters within its jurisdiction and that such findings are conclusive in the absence of fraud, imposition, or mistake. *Steel* v. *Smelting Co.*, *supra*, *Barden* v. *Northern Pacific Railroad*, 154 U. S. 288, at page 327, *Burfenning* v. *Chicago etc. Ry. Co.*, 163 U. S. 321, 323; *Burke* v. *Southern Pacific R. R. Co.*, 234 U. S. 669, 691. In *Heath* v. *Wallace*, 138 U. S. 573, this court stated this principle to be "settled by an unbroken line of decisions of this court." p. 585.

Error is assigned upon the rejection by the District Court of evidence tendered by defendants as to the validity of the mining claim. That there was no error in this is fully shown by what has been said herein on the conclusiveness of findings of fact by the Land Department upon matters within its jurisdiction.

Some statements made and points urged in the brief of the appellants should be adverted to, not because they are considered of moment but for fear that possibly our silence concerning them may be considered an assent to them.

It is said that the Land Department, in *Cataract Gold Mining Co. et al.*, 43 L. D. 248, receded from the position taken by it when the record on the hearing of the protest of the Grand Canyon Railway Co. against Ralph H. Cameron's applications for patents was first before it. Appellants' brief, p. 4.

The position on the first hearing was thus stated (36 L. D. 66, 71):

> That lands belonging to the United States can not be lawfully located, or title thereto by patent legally acquired, under the mining laws for purposes or uses foreign to those of mining or the development of minerals, as attempted in this case if the charges of the protests be true, is a proposition the soundness of which is beyond question. It was never contemplated or intended that public lands might be possessed and held and title thereto acquired under the mining laws for purposes or uses not essential to mining, or mining operations.

The same principle was restated in *Stanislaus Electric Power Co.*, 41 L. D. 655, 659.

There was no departure from this position in the *Cataract Gold Mining Co.* case, *supra*, for the question in the *Cataract* case was what was necessary with respect to the mineral character of land to render it disposable under the mining laws. The decision in *Stanislaus Electric Power Co.* was expressly approved and the governing principles of the case were restated. p. 254.

A reading of the appellants' brief would tend to give the impression that the decisions of the Land Department on Cameron's applications were rendered upon considerations other than those with reference to the character of the lands and the sufficiency of discovery. The excerpts from the decisions rendered, already set forth herein, clearly show that the case was decided upon the latter two points.

A large part of appellants' brief is devoted to a discussion of point I (p. 15), which is that the action of the Land Department in declaring Cameron's mining location invalid was not a judicial act.

This is so patently a misconception of the functions of the Land Department in passing upon contest proceedings and in determining whether an applicant for public lands is entitled to patent, that it deserves scant attention. It is well established that such functions are judicial.

In *Riverside Oil Co.* v. *Hitchcock*, 190 U. S. 316, this court said (p. 324):

> Congress has constituted the Land Department, under the supervision and control of the Secretary of the Interior, a special tribunal *with judicial* functions, to which is confided the execution of the laws which regulate the purchase, selling and care and disposition of the public lands. (Italics ours.)

Under this same point I, there is considerable discussion of the holdings of the Land Department as to its authority to entertain or institute proceedings against mining locations as to which no application for patent has been made to that Department. Particular and extended reference is made to an unreported decision of First Assistant Secretary Jones in the *J. B. Nichols & Cy Smith* case. Appellants' brief, pp. 30, 31, 32.

This, however, is beside the case, for the decisions of the Land Department of which complaint is made were rendered when the jurisdiction of the department had been invoked by Cameron's applications for patent. But in any event, whatever may be said of prior rulings of the department, it is now settled that the department asserts its jurisdiction to determine the validity of mining claims in the absence of an application for patent. The unreported decision in the *Nichols-Smith* case referred to in appellants' brief was vacated and overruled on rehearing (46 L. D. 20) and the previous holding

in the *Yard* case, 38 L D. 59, adhered to and reaffirmed.

Indeed, we are confident that the Land Department has jurisdiction to declare void a mining location even where patent has not been applied for and the jurisdiction of the department invoked, and this upon the broad ground of the duty of that department as custodian of the public domain. *Knight* v. *U. S. Land Ass'n*, 142 U. S. 161.

In the case of *Lane* v. *Cameron*, 45 App. D. C., 404, the same Ralph H. Cameron, who is a party here, sought to have the court restrain the Secretary of the Interior and other officials of the Land Department from proceeding to determine the character of the land embraced in certain unpatented mining locations in the Grand Canyon. Cameron challenged the right of the department to inquire into the validity of his claims *because he had not applied for patent*. The court said (pp. 410, 411):

> These claims were filed in the Grand Canyon in territory now set aside as a national forest and national monument. No adverse claims, therefore, now can be filed against them. Appellee and his associates, as set forth in the bill, naturally are "satisfied and content" with the situation, and "do not wish and may never desire" a patent to these claims. It is apparent, therefore, that unless the Land Department of the government, to which and to which alone has been intrusted the authority and duty of representing and protecting the public interest in these matters, is authorized

> to inquire into the good faith of these claims, the public interest may suffer. The jurisdiction of the Department to make such an inquiry should this appellee ask for a patent is not denied. The question of jurisdiction, therefore, under his contention, is dependent upon his will. If he conceives it to be to his interest to obtain a patent, jurisdiction will be conferred upon the Department to determine the character of the land embraced within these entries; but, if he elects not to apply for a patent, the Department, even if convinced that the character of the land is nonmineral, must permit him to occupy it to the exclusion of the public. This is a startling contention to press in a court of equity, and its fallacy is clearly apparent when we come to consider that the administration of the public land system was intrusted exclusively to the Land Department, that the public interest might be protected at all times.

The necessity for such broad jurisdiction is clear, especially with respect to lands withdrawn, as these lands are, for a specific purpose. Otherwise, the administration of such lands in accord with the purpose for which they were withdrawn would be hampered and in many instances frustrated. The instant case well illustrates the necessity for this power in the Land Department.

In appellants' brief attempt is made to escape the force of the decision in *Lane* v. *Cameron, supra,* by asserting that it is contrary to the decision in

Gauthier v. *Morrison*, 232 U. S. 452. There is, however, no analogy between the cases.

In *Gauthier* v. *Morrison* the question was whether the local courts had jurisdiction of an action brought by a homestead settler in support of his right to occupy certain unsurveyed land upon which he had settled, against one interfering with his possession. It was asserted by the defendants that as the government surveyor had designated the land as a lake, that designation was effective until changed by the Land Department and hence the land was not subject to settlement.

That is entirely different from a proceeding by the Land Department to determine the rights of one claiming under the public land laws. Furthermore, in *Gauthier* v. *Morrison*, the character of the land was not in issue, and it will be noted that this court was very guarded in its statement as to the jurisdiction of the Land Department and of the courts, respectively.

As showing inconsistency, the brief makes reference to the policy of the Land Department in this case as contrasted with that indicated in suits filed on behalf of the Government which involve lands in oil withdrawals. Appellants' brief, p. 33.

But that is also beside the case. It is true that the bills in some of the suits referred to, when filed were predicated upon the theory that the courts had jurisdiction to determine controversies between the Government and claimants under the mining laws even though applications for patents were pending

before the Land Department. Later on, however, the Department of Justice reached the conclusion that this theory was incorrect, and has adopted the view expressed in the opinion of the Circuit Court of appeals in *Devil's Den Consolidated Oil Co.* v. *United States*, 251 Fed. 548, which is that such suits are merely ancillary to the proceedings in the Land Department.

In the other cases cited, no applications for patents had been presented to the Land Department. Hence, the institution of those suits was not inconsistent with the position here taken as to the exclusive power of the Land Department to determine the character of the land, for the reason that in those cases there was no question that the land was valuable for oil.

The final point made in appellants' brief is that the creation of the Grand Canyon National Monument was illegal and without authority.

It appears that this point was not raised in the Court of Appeals, nor is it raised by the assignment of errors in this court, R. 218–220. Hence it should not be considered. *Magruder* v. *Drury*, 235 U. S. 106, 113.

But even if properly raised, the point can not be sustained. It is conceded that the Act of June 8, 1906, 34 Stat. 225, under which the Monument was created, authorizes the President to create monuments of objects of historic or scientific interest. It is likewise conceded that in the proclamation by the President creating the Monument it was declared that

the Grand Canyon of the Colorado River is an object of unusual scientific interest.

For the purposes of this appeal these conceded facts furnish an all-sufficient basis for the establishment of the Monument, and we confess our inability to see anything in appellants' contention to the contrary.

CONCLUSION.

It follows that the judgment appealed from should be affirmed.

Respectfully submitted.

FRANK K. NEBEKER,
Assistant Attorney General.
H. L. UNDERWOOD,
Special Assistant to the Attorney General.

JANUARY, 1920.

○

tific interest," within the meaning of the Act of June 8, 1906, *supra*, empowering the President to reserve such objects as "National Monuments." P. 455.

Mineral character and an adequate discovery of mineral within the location are essential to the validity of a mining claim, and without these the locator has not the right of possession. P. 456.

To bring a mining claim within an exception of "valid claims" in a proclamation establishing a monument reserve, the claim must be founded upon an adequate discovery of mineral made before the reservation; a discovery made later can confer no rights upon the claimant. *Id.*

To support a mining location the discovery must be such as to justify a person of ordinary prudence in the further expenditure of his time and means in an effort to develop a paying mine. P. 459.

A decision of the Secretary of the Interior, made upon an application to patent a mining claim within a monument reserve, finding the land claimed not mineral in character and the location not supported by any discovery antedating the reservation, and therefore rejecting the application and adjudging the location invalid, is conclusive as to the invalidity of the claim in a suit subsequently brought by the Government to enjoin the claimant from occupying and using the land for his private purposes and thus obstructing its use by the public as a part of the reserve. Pp. 459, 464.

A mining location which has not gone to patent is of no higher quality, and no more immune from attack and investigation, than unpatented claims under the homestead and kindred laws; and, so long as the legal title remains in the United States, the Land Department, in virtue of its general statutory duty and function, is empowered, after proper notice and upon adequate hearing, to determine whether such a location is valid, and, if found invalid, to declare it null and void. P. 460.

250 Fed. Rep. 943, affirmed.

THE case is stated in the opinion.

Mr. William C. Prentiss, with whom *Mr. Robert E. Morrison* and *Mr. Joseph E. Morrison* were on the brief, for appellants:

Possessory title to a mining claim is acquired under the mining laws wholly independently of the Land Department. Such title has the quality of a grant and is

property in the highest sense of the term. While, upon application for patent, the Land Department *ex necessitate* must pass upon the validity of the location, it does so administratively and not judicially. In case it refuses patent, its action is not conclusive, final, or binding, even as to itself. 42 L. D. 584; 43 L. D. 79.

Where the department, rightly or wrongly, denies patent to an applicant, without issuing patent to an adversary applicant, the effect is merely to wipe the application from the land records *pro tempore*. The department may afterward review its ruling, reinstate the application or entry, and grant patent.

Where, as here, the Land Department undertakes to go further and declare void the location upon which an application for mineral patent is predicated, such action is not conclusive, final, or binding, even as to itself.

The department is without power to enter a judgment of ejectment or in any manner to execute such an attempted declaration of illegality of a possessory mining claim.

Congress has not empowered the Land Department to pass upon the validity of a possessory mining claim otherwise than as involved in the actual issuance of patent to the claimant or an adversary claimant, and, then subject to limitations. Nor has Congress given the courts power, or imposed upon them the duty, of enforcing a mere declaration by the department of the invalidity of a possessory mining claim (not merged into disposition of the title to the land by issuance of patent to another), even assuming, for the sake of the argument, that Congress would have the power so to legislate.

It is only by the issuance of patent that action of the Land Department becomes effective, and then within limitations recognized by the courts.

The rule that decisions of the Land Department upon questions of fact are binding upon the courts is raised as an incident of, and in support of the integrity of patents,

recognizes that action by the Land Department upon applications for patent is not judicial but administrative, and is based upon the assumption that Congress, in vesting the department with administration of the laws governing the disposition of the title to public lands, conferred upon it the power and duty of deciding questions of fact involved in the granting of patents.

And the rule that decision by the Land Department of questions of law involved in the issuance of patent is not binding upon the courts, is recognition that the department acts administratively and not judicially.

The statement in the opinion in *Clipper Mining Co.* v. *Eli Mining Co.*, 194 U. S. 220, to the effect that the department, in rejecting an application to patent a mining claim, may go farther and set aside the location, is an *obiter dictum*, as clearly appears from a consideration of that case as it stood in the department. 7 Copp's L. O. 36; 11 L. D. 441, 442; 22 L. D. 527, 528; 33 L. D. 660, 665; 34 L. D. 401, 409.

Jurisdiction to cancel mining claims was disclaimed in 34 L. D. 276, and in the Instructions of February 6, and May 15, 1907, 35 L. D. 566; *id.* 565. The practice of investigating and passing upon mining locations in forest reserves, administratively (*H. H. Yard et al.*, 38 L. D. 59), was rejected in the unreported case of *Nichols and Smith*, October 24, 1913.

Lane v. *Cameron*, 45 App. D. C. 404, went upon the erroneous assumption that the power to determine the character of land as between the United States and a mining locator was vested exclusively in the Land Department, and that the courts alone would be powerless, which is contrary to *Gauthier* v. *Morrison*, 232 U. S. 452 (1 Lindley on Mines, 3d ed., § 108, pp. 188 *et seq.*), and contrary to the practice of the Government in bringing many suits attacking the possessory titles of oil land claimants.

The logical and proper tribunals to try the issue of discovery, upon which the miner's title depends, are the courts of the vicinage—not an administrative body two or three thousand miles away acting both as prosecutor or plaintiff and judge or jury. *Overman Silver Mining Co.* v. *Corcoran*, 15 Nevada, 147; *Erhardt* v. *Boaro*, 113 U. S. 527.

We submit that the decision of the department, in final analysis, resolves into a ruling, not that Cameron had not made discovery sufficient to validate the location, but that he had not developed a paying mine, and that, in any view, it was not entitled to judicial recognition.

The attempted setting apart of the land as the Grand Canyon National Monument was unauthorized, violative of the Forest Reserve Laws, and void.

Mr. Assistant Attorney General Nebeker, with whom *Mr. H. L. Underwood*, Special Assistant to the Attorney General, was on the brief, for the United States.

Mr. Justice Van Devanter delivered the opinion of the court.

This is a suit by the United States to enjoin Ralph H. Cameron and others from occupying, using for business purposes, asserting any right to, or interfering with the public use of, a tract of land in Arizona, approximately 1500 feet long and 600 feet wide, which Cameron is claiming as a lode mining claim, and to require the defendants to remove therefrom certain buildings, filth and refuse placed thereon in the course of its use by them as a livery stable site and otherwise. In the District Court there was a decree for the United States, and this was affirmed by the Circuit Court of Appeals. 250 Fed. Rep. 943.

The tract is on the southern rim of the Grand Canyon of the Colorado, is immediately adjacent to the railroad

terminal and hotel buildings used by visitors to the canyon and embraces the head of the trail [1] over which visitors descend to and ascend from the bottom of the canyon. Formerly it was public land and open to acquisition under the public land laws. But since February 20, 1893, it has been within a public forest reserve [2] established and continued by proclamations of the President under the Acts of March 3, 1891, c. 561, § 24, 26 Stat. 1095, 1103, and June 4, 1897, c. 2, 30 Stat. 34–36; and since January 11, 1908, all but a minor part of it has been within a monument reserve [3] established by a proclamation of the President under the Act of June 8, 1906, c. 3060, 34 Stat. 225. The forest reserve remained effective after the creation of the monument reserve, but in so far as both embraced the same land the monument reserve became the dominant one. 35 Stat. 2175. The inclusion of the tract in the forest reserve withdrew it from the operation of the public land laws, other than the mineral land law; and the inclusion of the major part of it in the monument reserve withdrew that part from the operation of the mineral land law, but there was a saving clause in respect of any "valid" mining claim theretofore acquired. The United States still has the paramount legal title to the tract, and also has the full beneficial ownership if Cameron's asserted mining claim is not valid.

The defendants insist that the monument reserve should be disregarded on the ground that there was no authority for its creation. To this we cannot assent. The act under which the President proceeded empowered him to establish reserves embracing "objects of historic or scientific interest." The Grand Canyon, as stated in his proclamation, "is an object of unusual scientific in-

[1] The Bright Angel Trail.

[2] Originally the Grand Canyon Forest Reserve and now the Tusayan National Forest.

[3] Called the Grand Canyon National Monument.

terest." It is the greatest eroded canyon in the United States, if not in the world, is over a mile in depth, has attracted wide attention among explorers and scientists, affords an unexampled field for geologic study, is regarded as one of the great natural wonders, and annually draws to its borders thousands of visitors.

The defendants also insist that in holding the United States entitled to the relief sought the courts below gave undue effect and weight to decisions of the Secretary of the Interior dealing with Cameron's asserted claim and pronouncing it invalid. Rightly to appreciate and dispose of this contention requires a further statement.

The claim in question is known as the Cape Horn lode claim and was located by Cameron in 1902 after the creation of the forest reserve and before the creation of the monument reserve. To make the claim valid, or to invest the locator with a right to the possession, it was essential that the land be mineral in character and that there be an adequate mineral discovery within the limits of the claim as located, Rev. Stats., § 2320; *Cole* v. *Ralph*, *ante*, 286; and to bring the claim within the saving clause in the withdrawal for the monument reserve the discovery must have preceded the creation of that reserve.

Cameron applied to the land department for the issue to him of a patent for the claim and similarly sought patents for other claims embracing other portions of the trail into the canyon. A protest was interposed charging that the land was not mineral, that there had been no supporting mineral discoveries and that the claims were located and used for purposes not contemplated by the mineral land law; and the Secretary of the Interior directed that a hearing be had in the local land office to enable the parties concerned,—the protestant, Cameron and the Government,—to produce evidence bearing on the questions thus presented. 35 L. D. 495; 36 L. D. 66. After due notice the hearing was had, Cameron fully

participating in it. This was shortly after the creation of the monument reserve. In due course the evidence was laid before the Commissioner of the General Land Office and he concluded therefrom that the claims were not valuable for mining purposes, and therefore were invalid. The matter was then taken before the Secretary of the Interior and that officer rendered a decision in which, after reviewing the evidence, he said:

"It is not pretended that the applicant has as yet actually disclosed any body of workable ore of commercial value; nor does the evidence reveal such indications and conditions as would warrant the belief or lead to the conclusion that valuable deposits are to be found, save, apparently, in the case of the Magician lode claim. With that possible exception, the probabilities of such deposits occurring are no stronger or more evident at the present time than upon the day the claims were located. The evidence wholly fails to show that there are veins or lodes carrying valuable and workable deposits of gold, silver, or copper, or any other minerals within the limits of the locations. Sufficient time has elapsed since these claims were located for a fair demonstration of their mineral possibilities."

And further:

"It follows from the foregoing that each of Cameron's applications for patent . . . must be rejected and canceled, and it is so ordered.

"It is the further result of the evidence, and the Department holds, that the several mining locations, with the apparent exception of the Magician lode claim, do not stand upon such disclosures or indications of valuable mineral in rock in place therein, prior to the establishment of the National Monument and the withdrawal of the lands therein embraced, as to bring them within the saving clause of the Executive Order. The right of Cameron to continue possession or exploration of those claims

CAMERON ET AL. *v.* UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 205. Argued January 29, 30, 1920.—Decided April 19, 1920.

The inclusion of part of a national forest within a monument reserve under the Act of June 8, 1906, c. 3060, 34 Stat. 225, by a proclamation of the President providing that both reservations shall stand as to the common area but that the monument reserve shall be dominant, and saving valid claims theretofore acquired, withdraws such area, except as to such claims, from the operation of the mineral land law. P. 454.

The Grand Canyon of the Colorado, in Arizona, is an "object of scien-

is hereby denied, and the land covered thereby is declared to be and remain part of the Grand Canyon National Monument as if such locations had not been attempted."

Directions were given for a further hearing respecting the Magician claim, but this is of no moment here.

That decision was adhered to on a motion for review, and in a later decision denying a renewed application by Cameron for a patent for the claim here in question the Secretary said:

"As the result of a hearing had after the creation of the national monument, the Department expressly found that no discovery of mineral had been made within the limits of the Cape Horn location, and that there was no evidence before the Department showing the existence of any valuable deposits or any minerals within the limits of the location. . . . So far as the portion of the claim included within the exterior limits of the national monument is concerned, no discovery which would defeat the said monument can have been made since the date of the previous hearing in this case, nor do I find that one is claimed to have been made since the former decision in any part of the alleged location."

After and notwithstanding these decisions Cameron asserted an exclusive right to the possession and enjoyment of the tract, as if the lode claim were valid; and he and his co-defendants, who were acting for or under him, continued to occupy and use the ground for livery and other business purposes, and in that and other ways obstructed its use by the public as a part of the reserves. In this situation, and to put an end to what the Government deemed a continuing trespass, purpresture and public nuisance, the present suit was brought.

The courts below ruled that the decisions of the Secretary of the Interior should be taken as conclusively determining the non-mineral character of the land and the absence of an adequate mineral discovery, and also as

showing that the matter before the Secretary was not merely the application for a patent but also the status of the claim,—whether it was valid or was wanting in essential elements of validity, and whether it entitled Cameron to the use of the land as against the public and the Government. As before stated, the defendants complain of that ruling. The objections urged against it are, first, that the Secretary's decisions show that he proceeded upon a misconception of what under the law constitutes an adequate mineral discovery, and, second, that although the Secretary had ample authority to determine whether Cameron was entitled to a patent, he was without authority to determine the character of the land or the question of discovery, or to pronounce the claim invalid.

As to the first objection little need be said. A reading of each decision in its entirety, and not merely the excerpts to which the defendants invite attention, makes it plain that the Secretary proceeded upon the theory that to support a mining location the discovery should be such as would justify a person of ordinary prudence in the further expenditure of his time and means in an effort to develop a paying mine. That is not a novel or mistaken test, but is one which the land department long has applied and this court has approved. *Chrisman* v. *Miller*, 197 U. S. 313, 322.

The second objection rests on the naked proposition that the Secretary was without power to determine whether the asserted lode claim, under which Cameron was occupying and using a part of the reserves to the exclusion of the public and the reserve officers, was a valid claim. We say "naked proposition" because it is not objected that Cameron did not have a full and fair hearing, or that any fraud was practised against him, but only that the Secretary was without any power of decision in the matter. In our opinion the proposition is not tenable.

By general statutory provisions the execution of the

laws regulating the acquisition of rights in the public lands and the general care of these lands is confided to the land department, as a special tribunal; and the Secretaty of the Interior, as the head of the department, is charged with seeing that this authority is rightly exercised to the end that valid claims may be recognized, invalid ones eliminated, and the rights of the public preserved. Rev. Stats., §§ 441, 453, 2478; *United States* v. *Schurz*, 102 U. S. 378, 395; *Lee* v. *Johnson*, 116 U. S. 48, 52; *Knight* v. *United States Land Association*, 142 U. S. 161, 177, 181; *Riverside Oil Co.* v. *Hitchcock*, 190 U. S. 316.

A mining location which has not gone to patent is of no higher quality and no more immune from attack and investigation than are unpatented claims under the homestead and kindred laws. If valid, it gives to the claimant certain exclusive possessory rights, and so do homestead and desert claims. But no right arises from an invalid claim of any kind. All must conform to the law under which they are initiated; otherwise they work an unlawful private appropriation in derogation of the rights of the public.

Of course, the land department has no power to strike down any claim arbitrarily, but so long as the legal title remains in the Government it does have power, after proper notice and upon adequate hearing, to determine whether the claim is valid and, if it be found invalid, to declare it null and void. This is well illustrated in *Orchard* v. *Alexander*, 157 U. S. 372, 383, where in giving effect to a decision of the Secretary of the Interior canceling a preëmption claim theretofore passed to cash entry, but still unpatented, this court said: "The party who makes proofs, which are accepted by the local land officers, and pays his money for the land, has acquired an interest of which he cannot be arbitrarily dispossessed. His interest is subject to state taxation. *Carroll* v. *Safford*, 3 How. 441; *Witherspoon* v. *Duncan*, 4 Wall. 210. The

government holds the legal title in trust for him, and he may not be dispossessed of his equitable rights without due process of law. Due process in such case implies notice and a hearing. But this does not require that the hearing must be in the courts, or forbid an inquiry and determination in the Land Department." And to the same effect is *Michigan Land & Lumber Co.* v. *Rust*, 168 U. S. 589, 593, where in giving effect to a decision of the Secretary canceling a swamp land selection by the State of Michigan theretofore approved, but as yet unpatented, it was said: "It is, of course, not pretended that when an equitable title has passed the land department has power to arbitrarily destroy that equitable title. It has jurisdiction, however, after proper notice to the party claiming such equitable title, and upon a hearing, to determine the question whether or not such title has passed. *Cornelius* v. *Kessel*, 128 U. S. 456; *Orchard* v. *Alexander*, 157 U. S. 372, 383; *Parsons* v. *Venzke*, 164 U. S. 89. In other words, the power of the department to inquire into the extent and validity of the rights claimed against the Government does not cease until the legal title has passed."

True, the mineral land law does not in itself confer such authority on the land department. Neither does it place the authority elsewhere. But this does not mean that the authority does not exist anywhere, for, in the absence of some direction to the contrary, the general statutory provisions before mentioned vest it in the land department. This is a necessary conclusion from this court's decisions. By an Act of 1848 the title to public land in Oregon then occupied as missionary stations, not exceeding six hundred and forty acres in any instance, was confirmed to the several religious associations maintaining those stations, but the act made no provision for determining where the stations were, by whom they were maintained or the area occupied. The land department proceeded to a determination of these questions in the

exercise of its general authority, and in *Catholic Bishop of Nesqually* v. *Gibbon*, 158 U. S. 155, 166, 167, where that determination was challenged as to a particular tract, it was said: "While there may be no specific reference in the act of 1848 of questions arising under this grant to the land department, yet its administration comes within the scope of the general powers vested in that department. . . . It may be laid down as a general rule that, in the absence of some specific provision to the contrary in respect to any particular grant of public land, its administration falls wholly and absolutely within the jurisdiction of the Commissioner of the General Land Office, under the supervision of the Secretary of the Interior. It is not necessary that with each grant there shall go a direction that its administration shall be under the authority of the land department. It falls there unless there is express direction to the contrary." And in *Cosmos Exploration Co.* v. *Gray Eagle Oil Co.*, 190 U. S. 301, 308, where a claimant asserting a full equitable title under the lieu land provision of the Forest Reserve Act of 1897 questioned the authority of the land department to inquire into and pass on the validity of his claim and sought to have it recognized and enforced by a suit in equity, it was said: "There can be, as we think, no doubt that the general administration of the forest reserve act, and also the determination of the various questions which may arise thereunder before the issuing of any patent for the selected lands, are vested in the Land Department. The statute of 1897 does not in terms refer any question that might arise under it to that department, but the subject-matter of that act relates to the relinquishment of land in the various forest reservations to the United States, and to the selection of lands, in lieu thereof, from the public lands of the United States, and the administration of the act is to be governed by the general system adopted by the United States for the administration of

the laws regarding its public lands. Unless taken away by some affirmative provision of law, the Land Department has jurisdiction over the subject." There is in the mineral land law a provision referring to the courts controversies between rival mineral claimants arising out of conflicting mining locations (Rev. Stats., §§ 2325, 2326), but it does not reach or affect other controversies and so is without present bearing. *Creede & Cripple Creek Mining Co.* v. *Uinta Tunnel Mining Co.*, 196 U. S. 337, 356, *et seq.*

It is rightly conceded that in the case of a conflict between a mining location and a homestead claim the department has authority to inquire into and determine the validity of both and, if the mining location be found invalid and the homestead claim valid, to declare the former null and void and to give full effect to the latter; and yet it is insisted that the department is without authority, on a complaint preferred in the public interest, to inquire into and determine the validity of a mining location, and, if it be found invalid, to declare it of no effect and recognize the rights of the public. We think the attempted distinction is not sound. It has no support in the terms of the mineral land law, is not consistent with the general statutory provisions before mentioned, and if upheld would encourage the use of merely colorable mining locations in the wrongful private appropriation of lands belonging to the public.

Instances in which this power has been exercised in respect of mining locations are shown in the *Yard Case*, 38 L. D. 59, and the *Nichols-Smith Case* (on rehearing), 46 L. D. 20; instances in which its exercise has received judicial sanction are found in *Lane* v. *Cameron*, 45 App. D. C. 404, and *Cameron* v. *Bass*, 19 Arizona, 246; and an instance in which its existence received substantial, if not decisive, recognition by this court is found in *Clipper Mining Co.* v. *Eli Mining Co.*, 194 U. S. 220, 223, 234.

The argument is advanced that the department necessarily is without authority to pronounce a mining location invalid, because it has within itself no means of executing its decision, such as dispossessing the locator. But this is not a proper test of the existence of the authority, for the department is without the means of executing most of its decisions in the sense suggested. When it issues a patent it has no means of putting the grantee in possession, and yet its authority to issue patents is beyond question. When it awards a tract to one of two rival homestead claimants it has no means of putting the successful one in possession or the other one out, and yet its authority to determine which has the better claim is settled by repeated decisions of this court. And a similar situation exists in respect of most of the claims or controversies on which the department must pass in regular course. Its province is that of determining questions of fact and right under the public land laws, of recognizing or disapproving claims according to their merits and of granting or refusing patents as the law may give sanction for the one or the other. When there is occasion to enforce its decisions in the sense suggested, this is done through suits instituted by the successful claimants or by the Government, as the one or the other may have the requisite interest.

Whether the tract covered by Cameron's location was mineral and whether there had been the requisite discovery were questions of fact, the decision of which by the Secretary of the Interior was conclusive in the absence of fraud or imposition, and none was claimed. *Catholic Bishop of Nesqually* v. *Gibbon, supra; Burfenning* v. *Chicago, St. Paul, etc., Ry. Co.*, 163 U. S. 321, 323. Accepting the Secretary's findings that the tract was not mineral and that there had been no discovery, it is plain that the location was invalid, as was declared by the Secretary and held by the courts below.

450. Argument for the United States.

Of other complaints made by the defendants, it suffices to say that, in our opinion, the record shows that the Government was entitled to the relief sought and awarded.

Decree affirmed.